(1)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

IN THE
Supreme Court of the United States

RAYMOND CHARLES PERSIK,
*Petitioner*

v.

COLORADO STATE UNIVERSITY,
*Respondent*

On Petition For Writ of Certiorari
To The U.S. Court of Appeals for the 10th Circuit

# PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS FOR THE US SUPREME COURT

1. "Agency policy can be developed either by the adoption of general rules or through case-by-case adjudication, *The Judicial Role in Defining Procedural Requirements for Agency Rulemaking*, 87 Harvard Law Review 782 (1974); as a first step, in ensuring the Federal Equal Employment Opportunity Commission (EEOC) has the ability to actually function, will this Court standardize the commission's policy by adopting the filing of the Intake Questionnaire, if a subsequent charge is filed, as fulfilling the 300 day filing deadline, as at least two U.S. circuit courts have already done?

2. Did the EEOC intentionally violate their policies to further case law, or can the Petitioner's failure to name the Colorado State Board of Agriculture, as the Defendant, be excused by Equitable estoppel?

3. Is the petitioner's failure to serve both the SBA and the President of CSU, more clearly a result of Equitable estoppel?

4. Will this Court adopt the "State Danger Theory", discussed by the U.S. 5th Circuit in *Greene v. Plano, L.S.D.*, 227 F. Supp.2d 615, 618 (2002)?

5. Once again, the Petitioner asks this Court to review the constitutionality of *Roe v. Wade*, 410 US 113 (1973); since church and state are separate in this Country, in theory, is alleged religious and gender discrimination the one area where we consider God's love in making a decision to protect the lives of our children still in the womb? Can this Court consider turning this decision back over to the States to protect those groups of men and women opposed to this procedure? At a minimum, can this Court give the decision

over the taking of an innocent, unborn, human life back to both parents?

6. Can the Petitioner apply for a Stay, in a separate motion, pursuant to U.S. Supreme Court Rule 23, to apply for class certification of questions 1, 2, 4, 5 & 6 in this petition?

## PARTIES TO THE PROCEEDING

1. United States Court of Appeals for the 10th Circuit
   Byron White U.S. Courthouse
   1823 Stout Street
   Denver, CO 80257
   (303) 844-3157

2. United States District Court, District of Colorado
   Alfred A. Arraj Courthouse
   901 19th Street
   Denver, CO 80294
   (303) 844-3433

3. Ken Salazar
   Colorado Attorney General
   Jane R. Christman
   First Assistant Attorney General, Employment Section
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   Denver, CO 80203
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4. Franklin A. Nachman and Eve Goldstein
   Counsel for Adecco[A]
   Littler Mendelson
   1200 17th Street #2850
   Denver, CO 80202-5835
   (303) -629-6200

5. U.S. Equal Employment Opportunity Commission

Denver District Office
303 East 17th Street, Suite 510
Denver, CO 80203
(303) 866-1300

6. Solicitor General of the US
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001
(202) 514-2203

7. Vice Admiral Richard H. Carmona, M.D.
The Surgeon General
5600 Fishers Lane, Room 18-66
Rockville, MD 20857
(301) 443-1707

[A] Adecco was a defendant/appellant to the cases in the lower Courts; however, the petitioner is not seeking certiorari with respect to this party.

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1. *Persik v. Colorado State University et. al.*, 02-1204, (U.S. 10th Circuit, Court of Appeals, 3Mar03, Order.

2. *Persik v. Colorado State University et. al.*, 01-WM-934, (U.S. District Court for the District of Colorado, 5Apr02, Order Accepting Magistrate's Recommendations)

3. *Persik v. Colorado State University et. al.*, 01-WM-934, (U.S. District Court for the District of Colorado, 23Jan02, Recommendations by the Magistrate Judge)

### Administrative Agencies

4. Federal EEOC (Denver); Dismissal of Charge Number 320A10464 / Permission to Sue Letter dated 16Feb01.

5. Federal EEOC (Denver); Formal Title VII Charge of Discrimination, Number 320A10464, **6Feb01**.

6. Colorado State University (CSU), **18Apr00**; Dr. Denke's Decision **Letter** of the Admissions Review Board denying acceptance back into the Ph.D. in Chemistry program at Colorado State University (CSU).

7. CSU Letter, 8Jan98; Ms. L. Samer's **Letter** granting the Petitioner's appeal of Ms. Hudgin's 22Dec97 decision.

8. CSU Letter, 22Dec97; Ms. Hudgin's **Letter** outlining university disciplinary actions.

9. CSU Letter, 18Nov97; Ms. Hudgin's **Letter** alleging violations of Student Rights and Responsibilities.
10. CSU Letter, 11Nov97; Ms. Cutler's (CSU Office of EO) **Letter** Requesting Initiation of Discipline Process.
11. CSU Informal Sexual Harassment Agreement, ~9-10-1997; **Verbal Agreement** with Ms. Cutler.

## BASIS FOR JURISDICTION OF THE UNITED STATES SUPREME COURT

1. The U.S. Court of Appeals for the 10th Circuit denied the petitioner's appeal on March 3, 2003. No Petition for rehearing was filed in the 10th U.S. Court of Appeals.

2. 50 USCS Appx § 512. Territorial application; jurisdiction of courts; form of procedure states: "(2) When under this Act [50 USCS Appx. §§ 501 et seq.] any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court". The U.S. Army ordered the petitioner to active service on 27Jan03, and orders released him from active duty on 12OCT03; in addition, the petitioner served three short periods of active duty following 12OCT03 totaling 12 days. Pursuant to 50 USCS § 511, n. 2, "Persons covered by Act". The term "military service" as used in Soldiers' and Sailors' Act of 1940 (50 USCS Appx §§ 501-590) requires serviceman to be on active duty; concept includes one absent from duty for lawful cause and excludes from protection of statute one absent from duty for other than lawful cause, such as desertion. *Driver v. Driver*, 36 Conn Supp 229, 416 A2d 705 (1980)."

3. Pursuant to 50 USCS Appx § 521, n 5, "'Plaintiff' and 'defendant' in 50 USCS Appx §§ 501 et seq. § 201 should be given liberal construction." *In Adoption of a Minor*, 78 US App DC 48, 136 F2d 790 (1943).

4. Pursuant to 50 USCS Appx §§ 525. Statutes of limitations as affected by period of service. "The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court … by or against any person in military service…" "Purpose of 50 USCS Appx § 525 is to extend time in which action could be brought by or against person in military service." *Van Heest v. Veech*, 58 NJ Super 427, 156 A2d 301 (1959). "50 USCS Appx § 525 should be liberally construed to protect rights of persons who have been obliged to drop their own affairs to take up burdens of nation." *Shell Oil Co. v. Industrial Com.*, 407 Ill 186, 94 NE 2d 888 (1950). "**Limitations provision of 50 USCS Appx § 525 is mandatory and not discretionary**." *Estate of Wolf Commissioner*, 264 F2d 82 (1959).

5. U.S. Supreme Court Rule 13 allows for 90 days to file a Petition for Writ of Certiorari. Therefore, the Petition for Writ of Certiorari would normally be filed on, or before, Sunday, 1Jun03 with an extension to 2Jun03 due to the weekend. However, the Petitioner was on federal active duty; therefore, this Petition is due 90 days following discharge, plus the additional 12 days of active service, or 102 days after 12OCT03. Therefore, this Petition is timely filed on, or before, 22Jan04, or January 22, 2004.

6. The United States Supreme Court can review this decision pursuant to U.S. Supreme Court Rule 10(a), if: "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; … or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise for the exercise of this Court's supervisory power", and U.S. Supreme Court Rule 10 (c)"… or a United States

court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court".

7. The petitioner does not believe that any notifications are required by U.S. Supreme Court Rule 29.4(b) or 29.4(c).

## CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES AND REGULATIONS

1. Pursuant to U.S. Supreme Court Rule 14 (f), the Appendix, A-64 to A-142 contains the text of most provisions required. Pursuant to U.S. Supreme Court Rule 33.1(d), "verbatim quotations required under Rule 14.1(f), if set out in the text of the brief rather in the appendix, are also excluded" from the page limit. Thus, the petitioner subtracted 18 pages from the total of this petition. The other page is for writing out applicable Soldier's and Sailor's Statutes, *infra*, Basis for Jurisdiction, for complete clarity.

2. Amendment I, U.S. Constitution. "Religious and political freedom. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peacefully to assemble, and to petition the Government for a redress of grievances."

3. Amendment IV, U.S. Constitution. "Unreasonable searches and seizures. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

4. Amendment VI, U.S. Constitution. Rights of the accused. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

5. Amendment VIII, U.S. Constitution. "Bail-Punishment, Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

6. Amendment IX, U.S. Constitution. "Rights retained by the people. The enumeration in the Constitution, or certain rights, shall not be construed to deny or disparage others retained by the people."

7. Amendment X, U.S. Constitution. "The Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

8. Amendment XI, U.S. Constitution. "Suits against states-Restriction of judicial power. The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

9. Amendment XIII, U.S. Constitution. "Section 1 Slavery Abolished. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Section 2. Power to

enforce amendment. Congress shall have power to enforce this article by appropriate legislation."

10. Amendment XIV, U.S. Constitution.

"Sec. 1 [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec 2 [Representatives-Power to reduce apportionment.] Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the: choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3 [Disqualification to hold office.] No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an

officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Sec. 4 [Public debt not to be questioned-Debts of the Confederacy and claims not to be paid.] The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slaves; but all such debts, obligations, and claims shall be held illegal and void.

Sec. 5 [Power to enforce amendment.] The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

11. 10 USCS § 141. Inspector General. A-64

12. 10 USCS § 333 (1999) Interference with State and Federal law. A-65

13. 10 USCS § 371. Use of information collected during military operations. A-65

14. 10 USCS § 372. Use of military equipment and facilities. A-66

15. 10 USCS § 380. Enhancement of cooperation with civilian law enforcement officials. A-66

16. 16 USCS § 917. Congressional findings. The Congress finds that – (4) the conservation and protection of certain species of whales, including the California gray, bowhead, sperm, and killer whale, are of particular interest to citizens of the United States;..."

17. 18 USCS § 241. Conspiracy against rights. A-67

18. 18 USCS § 242. Deprivation of rights under color of law. "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects and inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if bodily injury results shall be fined under this title or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life."

19. 18 USCS § 401. Power of court. "A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none others, as – (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice; (2) Misbehavior of any of its officers in their official transactions; (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

20. 18 USCS § 1001. Statements or entries generally. A-68

21. 18 USCS § 1341. Frauds and swindles. A-68

22. 18 USCS § 1512. Tampering with a witness, victim, or

informant.:

(a)(1) Whoever kills or attempts to kill another person, with intent to-

(A) prevent the attendance or testimony of any person in an official proceeding;

(B) prevent the production of a record, document, or other object, in an official proceeding; or

(C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission of possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings; shall be punished as provided in paragraph (2).

(2) The punishment for an offense under this subsection is-

(A) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title; and

(B) in the case of an attempt, imprisonment for not more than twenty years.

(b) Whoever knowingly uses intimidation or physical force, threatens or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to-

(1) influence, delay or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to-

(A)..withhold testimony, or withhold a record, document, or other object with intent to impair the object's integrity or availability for use in an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such

person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or …;

shall be fined not more than $250,000 or imprisoned not more than ten years, or both.

(c) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades and person from –

(1) attending or testifying in an official proceeding;

(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

(3) arresting or seeking the arrest of another person in connection with a Federal offense; or …

or attempts to do so, shall be fined not more than $25,000 or imprisoned not more than one year, or both.

(d) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct…

(e) For the purposes of this section-

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free from the claim of privilege.

(f) …

(g) …

(h) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.

23. 18 USCS § 1513. Retaliating against a witness, victim, or an informant.

(a) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for-

(1) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(2) any information relating to the commission or possible commission of a Federal offense or a violation of conditions…

or attempts to do so, shall be fined not more than $250,000 or imprisoned not more than ten years, or both.

(b) There is extraterritorial Federal jurisdiction over an offense under this section.

24. 18 USCS § 1514. Civil action to restrain harassment of a victim or a witness.

(a)(1) A United States district court, upon application of the attorney for the Government, shall issue a temporary restraining order prohibiting harassment of a victim or witness in a Federal criminal case if the court finds, from specific facts shown by affidavit or by verified complaint, that there are reasonable grounds to believe that harassment of an identified victim or witness in a Federal criminal case exists or that such order is necessary to prevent and restrain an offense under section 1512 of this title, other than an offense consisting of misleading conduct, under section 1513 of this title.

(2)(A) A temporary restraining order may be issued under this section without written or oral notice to the adverse party or such party's attorney in a civil action under this section if the court finds, upon written certification of facts by the attorney for the Government, that such notice should not be

required and that there is a reasonable probability that the Government will prevail on the merits.

25. 18 USCS § 1584. Sale into involuntary servitude. A-69

26. 18 USCS § 1951. Interference with commerce by threats or violence. A-69

27. 18 USCS § 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises. A-71

28. 18 USCS § 1961. Definitions. A-72

29. 18 USCS § 2241. Aggravated sexual abuse. A-76

30. 18 USCS § 4241. Determination of mental competency to stand trial. A-78

31. 22 USCS § 6401. Findings; policy; International Religious Freedom. A-79

32. 22 USCS § 7101. Purposes and findings; Trafficking Victims Protection. A-82

33. 28 USCS § 1733. Government records and papers; copies
(a) Books or records of account of minutes of proceedings of any department or agency of the United States shall be admissible to prove the act, transaction or occurrence as a memorandum of which the same were made or kept.
(b) Properly authenticated copies or transcripts of any books, records, papers or documents of any department or agency of the United States shall be admitted in evidence equally with the originals thereof.
(c) This section does not apply to cases, actions, and proceedings to which the Federal Rules of Evidence apply.

34. 42 USCS § 1981. Equal rights under the law. A-88

35. 42 USCS § 1983. Civil action for deprivation of rights. A-89

36. 42 USCS § 1985. Conspiracy to interfere with civil rights. A-89

37. 42 USCS § 1986. Conspiracy to interfere with civil rights. A-91

38. 42 USCS § 2000b. Civil actions by the Attorney General. A-92

39. 42 USCS § 2000b-1. Liability of United States for costs and attorney's fee. A-93

40. 42 USCS § 2000b-2. Personal suits for relief against discrimination in public facilities. A-93

41. 42 USCS § 2000 e. Definitions For the purposes of this title [42 USCS §§ 2000e et seq.]-
(a) The term "person" includes one or more individuals, governments. governmental agencies, political subdivisions, labor union,s, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11. United States Code, or receivers.
(b) Tile term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include
(1) the United States, a corporation wholly owned by the Goverment of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 of the United States Code) or (2) a

bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Reveuue Code of 1954 [26 USCS § 501(c)] except that during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972 [enacted March 24, 1972], persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation cormnittee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other temps or conditions of employmeut, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in au industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members for, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization is (A) twenty-five or more during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972 [enacted March 24, 1972], or (B) fifteen or more thereafter, and such labor organization-

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce: or;

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) has the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint Council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce witbin the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public offce in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutiooal or legal powers of the offiqe. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term "commerce" means trade, traffic, commerce,

transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" witttin the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 USCS §§ 40l et seq.], and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa. Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 USCS §§ 1331 et seq.].

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title [42 USCS § 2000e-2(h)] shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where

medical complications have arisen from an abortion: *Provided*, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.
(l) The term "complaining party" means the Commission, the Attorney General, or a person who may bring an action or proceeding under this title.
(m) The term "demonstrates" means meets the burdens of production and persuasion.
(n) The term "respondent" means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program or Federal entity subject to section 717.

42. 42 USCS § 2000e-2. Unlawful employment practice. A-94

43. 42 USCS § 2000e-3. Other unlawful employment practices. A-102

44. 42 § 2000e-5. Enforcement provisions. A-104

45. 42 USCS § 2000bb. Religious Freedom Restoration Act of 1993. Congressional findings and declaration of purposes. A-112

46. 42 USCS § 2000bb-1. Free exercise of religion protected. A-113

47. 42 USCS § 2000bb-2. Definitions. A-114

48. 42 USCS § 2000bb-3. Applicability. A-114

49. 47 USCS § 223 (1995). Obscene or harassing telephone calls in the District of Columbia or in interstate or foreign communications. A-115

50. 50 USCS § 1801. Definitions; Electronic Surveillance. A-120

51. 50 USCS Appx §§ 501 et. seq. Soliders' and Sailors' Civil Relief Act of 1940. A-115-120

52. 50 USCS Appx §§ 525. Statutes of limitations as affected by period of service. "The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court … by or against any person in military service…, whether such cause of action or the right or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service…"

53. C.R.S. 12-43-218 (2002) Disclosure of confidential communications. A-120

54. C.R.S. 13.25-125.5. Libel and slander – self publication. No action for libel and slander may be brought or maintained unless the party charged with such defamation has published, either orally or in writing, the defamatory statement to a person other than the person making the allegation of libel and slander. Self-publication, either orally or in writing, of the defamatory statement to a third person by the person making such allegation shall not give rise to a claim for libel or slander against the person who originally communicated the defamatory statement.

55. C.R.S. 13-25-131 (1999) Civil actions – sexual assault – certain evidence presumed irrelevant. A-123

56. C.R.S. 13-6-106 (2002) Original Criminal Jurisdiction. A-123

57. C.R.S. 18-1-602 (1999) Behavior of Another. A-124

58. C.R.S. 18-1-603 (1999) Complicity. A-124

59. C.R.S. 18-1-606 (2002) Criminal Liability of Corporations. A-125

60. C.R.S. 18-1-709 (2002) Entrapment. A-126

61. C.R.S. 18-2-201 (2002) Conspiracy. A-127

62. C.R.S. 18-2-202 (2001) Joinder and venue in conspiracy prosecutions. A-129

63. C.R.S. 18-2-206 (2002) Penalties for criminal conspiracy – when convictions barred. A-129

64. C.R.S. 18-2-301 (2002) Criminal solicitation. A-130

65. C.R.S. 18-3-207 (2002) Criminal extortion - aggravated extortion. A-131

66. C.R.S. 18-3-404 (2002) Unlawful sexual contact. A-133

67. C.R.S. 18-9-111 (g) (1999) "Harassment - stalking. A-136

68. C.R.S. 24-5-101. (2002) Effect of criminal conviction on employment rights. A-136

69. 35 P.S. § 780-112. Records of distribution of controlled substances. A-137

70. 35 P.S. § 780-113. Prohibited acts; penalties. A-138

71. RCW 9.02.110. Right to have and provide. A-140

72. RCW 9.02.120. Unauthorized abortions – Penalty. A-140

73. RCW 9.02.150. Refusing to perform. A-140

74. RCW 9.02.170. Definitions. A-141

75. R.C.W. 9A.76.060. Relative defined.

As used in RCW 9A.76.070 and 9A.76.080, "relative" means a person:

(1) Who is related as husband or wife, brother or sister, parent or grandchild, step child or step-parent to the person to whom criminal assistance is rendered; and

(2) Who does not render criminal assistance to another person in one or more of the means defined in subsections (4), (5), or (6) of RCW 9A.76.050.

76. R.C.W. 9A.76.070. Rendering criminal assistance in the first degree , et. seq.

(1) A person is guilty of rendering criminal assistance in the first degree if he renders criminal assistance to a person who has committed or is being sought for murder in the first degree or any class A felony or equivalent juvenile offence.

(2) Rendering criminal assistance in the first degree is:

(a) A gross misdemeanor if it is established by a preponderance of the evidence that the actor is a relative as defined in RCW 9A.76.060.

(b) A class C felony in all other cases.

77. 18 V.S. § 7614 (2000). Psychiatric examination, et. seq.

As soon as practicable after notice of the commencement of proceedings is given, the court on its own motion of the proposed patient or his attorney or the state of Vermont shall authorize examination of the proposed patient by a psychiatrist other than the physician making the original certification. The examination and subsequent report or reports shall be paid for by the state of Vermont. The

physician shall report his finding to the party requesting the report or to the court if it requested the examination.

78. The United Nations Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. Article 2, Note 2. A-142

## STATEMENT OF THE CASE

1. The petitioner requests this Court to take an important stand and expand the employment rights, civil rights and human rights of all Americans today. "[A]chievement of civil rights goals and the full exercise of equal rights by minority group members will involve more than adjustments in civil rights enforcement machinery. It will require dedication and resolve on the part of Government officials and the American people, alike. The United States Commission on Civil Rights, Federal Civil Rights Enforcement Effort 1093 (1970)." *Employment Discrimination and Title VII of the Civil Rights Act of 1964*, 84 Harvard Law Review, 1108,1109 (1971).

2. The petitioner maintains the background facts, *infra* 3-8, will assist this Court in granting this petition based on the questions presented for review. "Raising an inference of discrimination with background circumstances... Different factors may be considered and will satisfy background circumstances..." 45A Am. Jur.2d § 131, 189.

3. Circa 1975, following a cross-country trip to Burbank, CA, returning through Flagstaff, AZ, the petitioner's father invited his African American friend, Art, and his beautiful family, over to the family home in Lewisberry, Pennsylvania. In 1979, the petitioner's family sold their Lewisberry, PA home to Sandra, a wonderful, African American woman despite severe protests in the neighborhood. Allegedly two

lesbian women, living together across the street, also disagreed with the sale to the racial minority.

4. Following Labor Day weekend, 1983, a friend's roommate, at Shippensburg University of Pennsylvania (SU), told the petitioner that Kathy would no longer be his friend because "you are gay". The Petitioner's sexual orientation has always been "straight". The petitioner began dating a Peruvian friend on Easter Sunday, 1984. Her previous boyfriend allegedly attempted date rape in his previous 1984 visit to SU. This man was from Bolivia, and he was completing an International Monetary Fund (IMF) internship in Washington, D.C..

5. From Jun88-Oct88, the petitioner attended his Chemical Officer Basic Course in Ft. McClellan, AL. The skill identifier for an enlisted soldier, in this area was 54B, and the officer identifier was a 74 series. One of the operations' identifiers in the U.S. Army is 54. The petitioner later purchased a property in Federal Way, WA, lot 54. On Sunday, 18Jan04, WB, Channel 2, in Denver, CO, aired a movie on Dr. Martin Luther King, Jr; part 3, reminded the petitioner of a 54 mile road march, in AL, for civil rights.

6. On 17Jul90, the 9th Infantry Division ordered petitioner, 136-709, to 1-11 Field Artillery. Pursuant to 28 USCS § 1733 (b) allows for the introduction of this as evidence. Pursuant to 28 USCS § 1331, District Courts, Jurisdiction, n. 87, "Federal courts have jurisdiction to review claims which allege that the armed services have failed to follow their own regulations." *Febus Nevarez v. Schlesinger, D.C. Puerto Rico*, 440 F.Supp. 741 (1977).

7. The petitioner's now ex-wife conceived a child in the time frame of April 21-23, 1994 in Boulder, or Denver, Colorado. The petitioner's now ex-wife exercised her right to an abortion, at the University of WA Medical Center, on

27Sep94, or 9-27-94. The petitioner allegedly began experiencing pro life political/religious discrimination, and gender discrimination, immediately upon returning to UNL to continue his studies.

8. Upon successfully defending a Master of Science, on: Variable Temperature Magic Angle Spinning Probe for Solid State Nuclear Magnetic Resonance, Raymond Charles Persik and the UNL, 17Aug96. From Aug96-Mar99, the petitioner was the Fire Direction Officer for the MO ARNG at 709 College Park Drive; Maryville, MO.

9. In January 1997, the petitioner began work toward his Ph.D. at Colorado State University (CSU) in Ft. Collins; he was the general chemistry, teaching assistant for the alleged victim of sexual harassment, Ms. Mollie Schriebman, in the Spring Semester 1997. The petitioner, and the victim, did talk on numerous occasions outside of the classroom which was typical behavior of the petitioner with all students.

10. Upon successful completion of the semester, on 16May97, the petitioner requested permission to date the alleged victim, from Dr. Nancy Boldt of chemistry. On Friday evening, the alleged victim came to campus to meet the petitioner. After midnight, the petitioner alleges that both parties kissed, consensually, on and off, for two hours. The alleged victim dropped the petitioner off at his apartment. On Tuesday, 20May97, the petitioner alleges that the two parties kissed, again consensually, for approximately 4 hours commencing around 10:00 p.m., at the petitioner's CSU apartment. These were the only two intimate occasions between the two parties

11. The petitioner postponed his divorce, from his wife of 11 years, resulting from the taking of his unborn son's life mentioned *supra* at no. 11, until 13Jun97, or 6-13-97. The petitioner's Master's thesis, *supra* at no. 12, revolves around

the Carbon-13 nucleus. Carbon is element 6. Thus, the petitioner alleges his now ex-wife desired to exploit him to spread the liberal agenda of: women's rights, abortion, gay rights, anti-military views and governmental sponsored health care. The petitioner supports all women's rights with the exception of abortion.

12. On, or about 22Jun97, the alleged victim informed the petitioner that she, and her twin sister, were allegedly victimized by a 14 yr old boy at ages 3-4. Their father, Mr. W. Schreibman, apparently took no action. The petitioner reported this the next day to Carole Fremole, CSU counseling center. On 21Jul97, at the intersection of US 36 and US 34, in Rocky Mountain National Park, the petitioner remembers the first allegation of the "Influence of Thoughts", C.R.S. 13-25-131 (1999), Civil Action – Sexual Assualt. Approximately one hour later, he bumped into Ms. Schreibman, and her father, at rainbow point, in the park. Ms. Schreibman later told the petitioner that she did not believe in God.

13. The alleged victim requested: "the petitioner not contact her until she contacted him" on 1Aug97. The petitioner wanted someone to drive him to the hospital, and he requested a friend, Stacy, call the alleged victim to take him. Later in the day, Sgt Higney, of the CSU police department (PD), contacted him to come over to the office. He stated not to talk to the alleged victim, or her sister. The following week, after no added contact, the CSU EO office, Ms. Cutler, contacted the petitioner. She had the petitioner enter into a **verbal no contact agreement**. No witness was present during this meeting, and there is no written agreement.

14. The petitioner alleges that he was being stalked on the campus of CSU by the alleged victim, her friends and Sgt. John Higney, CSUPD, on an often daily basis. On 31OCT97, after a near collision with the victim in the

chemistry tutorial room on, or about, 23OCT97, the petitioner talked to the alleged victim. No foul words, or nasty statements, were used. The petitioner saw the alleged victim every day that he was on campus for the next five days. On 10Nov97, "Mr. Persik walked by Ms. Schreibman three times in approximately 15 minutes while she was speaking to an acquaintance outside of Sweet Sinsations", *infra* at A-60, ¶ 2, and **he requested that she stay away from him**. She returned to the CSU EO office. First the petitioner requests this Court focus on the words "Sweet Sinsations". "Stalking protective order (STO) can be issued pursuant to civil stalking statute without violating free expression guarantees of Federal and State Constitutions, but only if underlying expression represents threat, ... complainant actually experiences fear or apprehension, ... that alarm is reasonable, Amendment I, U.S. Constitution", *Hanzo v. deParrie*, 953 P. 2d 1130,1130 (1997). The OR Court of Appeals heard arguments, in this cited case, on the same day the alleged harassment and discrimination, by Ms. Shcreibman, her father and Sgt. Higney, began, 29Aug97. The court cites: "Hanzo is a notorious Portland child killer..." *supra* at 1134. The petitioner will later argue that his thoughts were being influenced, C.R.S. 13-25-131, with some officials aware of said activity, on the campus of CSU.

15. The petitioner was informed, in writing, *infra* at A-58, just prior to Thanksgiving break, that he violated the agreement with Ms. Cutler. Ms. Hudgins, of the CSU Judicial Affairs office, conducted a meeting where the petitioner had nearly 7 or 8 witnesses present explaining that the petitioner was the one being allegedly harassed, stalked and tormented by Ms. Mollie Schreibman et. al. Ms. Hdgins denied the petitioner the right "to exercise your right to have adverse witnesses questioned", *infra* at A-52, ¶4.

16. Ms. Hudgins restricted the petitioner from contacting the alleged victim until her graduation in May99, *infra* at A-51.

The petitioner appealed the decision, that he be held completely responsible for avoiding all contact; the appeal was granted; however, for some unknown reason, the petitioner dismissed his appeal on 20Jan98 dating the note 20Sep98.

17. The petitioner avoided contact with Ms. Schreibman all 1998. The petitioner tutored two alleged co-conspirators from Jan98 to Sep98. Please review the dates in 19 *supra.*

18. From May98-Jul98, the petitioner and Ms. Soderberg, an alleged co-conspirator, traveled to numerous national parks: Capitol Reef, Bryce Canyon, Arches, Yellowstone, Carlsbad Caverns, and Guadalupe Mountains. In addition, they hiked an old railroad, built by the Chinese immigrants, in Baker National Forest in WA State, with her uncle, brother and cousins. The two persons went to the first three parks alone which contradicts a Mar99, or 3-99, statement by Ms. Soderberg. Element 3 in chemistry is Li, or Lithium; Es is element 99. "Was she trying to show that she, Ms. Schreibman, and the university staff, were possibly telling lies?" The petitioner has in excess of 150 photographs admissible pursuant to F.R.E. 404 et. seq from a single trip mentioned.

19. The petitioner contacted the alleged victim, from PA, on 2Jan99 at about 2 am (MST) according to phone records. The petitioner can state precisely what the person, using an unknown frequency, allegedly **influenced** him to say and do, C.R.S. 13-25-131

20. Sgt Higney and Lt Swenson arrested the petitioner upon returning to the CSU on 28Jan99. On 1Feb99, the petitioner entered into a guilty plea, for a misdemeanor offense, C.R.S. 18-9-111(g) . The petitioner later argued the validity of the plea to this Court, *Persik v. Colorado*, 02-875 (2002), cert. denied, 24Feb03, rehearing denied, 21Apr03.

21. In Mar99, the petitioner discussed the influence of thoughts with two very intelligent scientists. Dr. M. Schurr , UW Chemistry, and Dr. Eugene Deardorff from SU in PA. The petitioner had no desire to contact the alleged victim because he dearly loved Julie Sage from CSU since a short time after meeting her in Sep97. Dr. Schurr stated: "you are a scientist; you know this is possible".

22. In Apr99, the petitioner had a date in Sioux Falls, SD with Angela. During the date he experienced the alleged influence of thoughts after requesting Angela for a kiss on her couch in her apartment. The allegations are that an unknown person attempted to have the petitioner go further than he, or Angela, wanted. After leaving, the petitioner was allegedly informed, using the unknown radio frequency: "She would be the last woman that you would ever kiss". The petitioner clearly asserts this technology can be used to rape either a male, or a female individual. This behavior should be criminal pursuant to 18 USCS § 2241 (a)(1).

23. The petitioner sent Ms. Schreibman, the alleged victim, a love letter after graduated. Now, the victim can provide substantial evidence, with the aid of science, 29 Am Jur 2d §94. Validity of scientific theories and techniques, and a 28Apr03 army memo, that his thoughts were being influenced. This is an alleged violation of C.R.S. 13-25-131, Amendment VIII, U.S. Constitution, and "The United Nations Convention Against Torture…" The petitioner immediately tried to get the letter out of the mailbox, but he did not want to commit a real crime.

24. The petitioner was arrested again on 2Jun99 while meeting Lt. Swenson of the CSUPD at Subway in Ft. Collins on Elizabeth. The second officer drafted a supplement to the arrest that give the appearance of an interrogation, if: "intended to affect the personality and psychological makeup

of the suspect may constitute interrogation", *Brewer v. Williams*, 51 L.Ed. 2d 424. The petitioner was not read his Miranda rights at any time on either arrest. The petitioner refused to plead guilty to another count of C.R.S. 18-9-111(g) because the alleged victim picked up her mail at 2:00 pm; he later entered into a deferred prosecution against his wishes. A fact, Swenson, number 17, is the name of the QB for the AZ Cardinals, in the movie Jerry McGuire.

25. The petitioner located C.R.S. 13-1-125 (1999) immediately after being released from detention in the University of Colorado (CU) law library. The petitioner immediately began receiving threats. The petitioner was told by Mr. Bill Morrow, while working in camera sales, "you do not know what they will do to you if you return (to Colorado)." The petitioner's words are very close. Dr. Deardorff appeared afraid for the petitioner to stay in PA, or return to CO, and he suggested that the petitioner return to WA. The petitioner reminds this Court of 18 USCS § 1584 which prohibits "selling into any condition of involuntary servitude".

26. In Jan00, the petitioner was choked by two men days after obtaining a new job through Adecco at Celestica. He was released from his new job on the very next shift after being warned by a police officer "things get worse before you get off of the street" while reporting the assault. The police report is allegedly falsified. The petitioner states 18 USCS § 1961 is allegedly applicable at this point.

27. The petitioner attended a readmission hearing, at CSU, on 23Mar00, *infra* at A-44. The meeting was the first opportunity to air the alleged multitude of crimes being committed, to this day, against the petitioner. Therefore, the university staff, in attendance, had the opportunity to review information never previously disclosed. During said meeting, the CSUPD Chief, Don Hopkins, stated that the

petitioner had two guilty criminal convictions, or pleas. This was not the case; the second was a deferred prosecution. Furthermore, the petitioner discussed C.R.S. 13-25-131 for the first time with a public official. Chief Hopkins appeared more concerned about the cost of influencing thoughts, versus the severity and implications of the use of such technology on, or off campus, with a human being as the subject. This alone constitutes a very serious, new allegation of same sex gender discrimination.

28. The university denied the petitioner's acceptance back into the Ph.D. program, *infra* at A-40, in a letter dated 18Apr00. Although the meeting occurred on 23Mar00, the law clearly states the letter represents the last date of discrimination. Thus, an EEOC charge is timely filed on, or before, 11Feb01. Manpower released the petitioner from employment at CU Wardenberg, on the morning of 24Apr00. On 25Apr00, CSPAN aired a senate meeting discussing the legalization of abortion on military bases. A coincidence?

29. Officer Swisher, CU police, restricted the petitioner from the campus on 18Aug00 for 1 year for being in the law library past the normal building closing time – the building was open later than normal. The petitioner saved enough cash to return to WA State in Sep00 to obtain evidence out of his storage unit; however, additional crimes, and alleged further employment discrimination, prevented him from returning until late Nov00. On 27Nov00 and 4Dec00, the petitioner filed two Intake Questionnaires with the Denver Federal Equal Employment Opportunity Commission (EEOC). The 4Dec00 Questionnaire pertains to the elements in this case, and he stated 12Apr00, for safety, as the last date of alleged discrimination. His lap top computer was stolen, along with the letter, from a laundry mat in Boulder, CO circa May00 (police report available). The EEOC representative set a meeting for 9Jan01.

30. On 22Dec00, the petitioner was allegedly hit by a car while riding his bike back in PA for Christmas. The petitioner was walking his. The petitioner woke up from an alleged drug induced coma in a hospital late Christmas night. On 8Jan01, the petitioner called the EEOC to obtain their fax number to postpone the meeting to file a charge of discrimination against CSU. The representative postponed the meeting, via voice, to 6Feb01.

31. The EEOC filed charge number 320A10464 on 6Feb01. This was 301 days following the 12Apr01 date listed on the Intake Questionnaire, but it is clearly 295 days from the 18Apr00 date on the CSU letter, *infra* at A-40.

32. The EEOC dismissed the charge on 16Feb01 for untimely filing, and the petitioner submitted a letter correcting the technical error, on the 4Dec01 questionnaire, upon receipt of a copy of the 18Apr00 letter from CSU, *infra* at A-31, ¶1. The EEOC refused to re-open the case.

33. The petitioner timely filed case, 01-WM-934, 90 days from the receipt of the notice of dismissal, against CSU and Adecco on 23May01, in the United States District Court for the District of Colorado. Eventually, Staffing Solutions found low income work, for the petitioner, at a plastic molding company in the Boulder area.

34. The petitioner filed for a restraining order in this case on 12Jul01; The Honorable Judge Walker denied it on 16Jul01 for failure to consult with counsel; however, CSU had not assigned counsel, and for failure to double space the motion. In addition, he contacted CPT Chaffey, a trusted CSU police officer, via e-mail, to coordinate delivering CSU the form to waive service of process and a copy of the complaint. He referred the petitioner, in writing, to Lawrence Pendleton, attorney for CSU. Mr. Pendleton clearly stated words very close to: "you need to contact the attorney general's office".

Furthermore, the petitioner believes Mr. Pendelton stated that the attorney general receives service of process on behalf of the university.

35. The petitioner was fired again, circa 15Aug 01, after complaining about further violations of C.R.S. 13-25-131, while cleaning razor sharp blades in the printing area of the company. Following this, Staffing Solutions could not find additional work for the petitioner; however, the excellent staff did not terminate the relationship. The petitioner traveled to Jefferson City, MO to discuss the horrific manner in which he was being treated, in CO, with a former, respected, MOARNG commander.

36. On 19Aug01, the petitioner's time limit, on the restriction from CU expired; therefore, he could use the law library. The petitioner filed for an extension of time pursuant to F.R.C.P. 4(m) to serve process, against CSU, on 20Sep01. The magistrate judge extended time to serve both defendants until 15OCT01.

37. On 12OCT01, the Denver Sheriff's department served the CO Attorney General. The petitioner will discuss the alleged failures in service of process *infra*, argument, part IV & V.

38. On 1Nov01, Jane R. Christman, 12206, special counsel for CSU, filed a Motion to Dismiss and Motion for Stay of All Proceedings pursuant to F.R.C.P. 12(b)(2),(4)(5) and (m). Defendant states service of process issues, and furthermore, defendant correctly asserts that CSU is not the correct defendant. Counsel asserts that the Colorado State Board of Agriculture (SBA) is the correct defendant, *Roberts v. Colorado Board of Agriculture*, 998 F.2d 824, 827 (10th Cir. 1993).

39. The petitioner filed a response dated 9Nov01, and special counsel for CSU filed a reply on 20Nov01. The

petitioner will not discuss defendant Adecco because the decision of the lower court is not being appealed.

40. On 23Jan02, Magistrate Judge, Michael J. Watanabe, recommended to grant CSU's Motion to Dismiss, and deny the petitioner's Motion, *infra* at A-11.

41. On 4Feb02, the petitioner filed Objections to the recommendations, *supra*, in 40. The petitioner's main argument is that the US Attorney's office should handle this charge of discrimination because it was timely filed on 6Feb01. In a 2002 conversation, with an EEOC enforcement officer, the individual was not aware of this requirement.

42. On 5Apr02, the Honorable Judge Walker Miller accepted the Magistrate's recommendations, and ordered, *infra* at A-7, the dismissal of the complaint for reason(s) stated *supra* at 41. The petitioner filed a timely appeal on 3May02.

43. On 17Sep02, the 3 Judge Panel denied Appellant's request for an oral argument, and on 3Mar03, the 10th U.S. Court of Appeals for the 10th Circuit "AFFIRMED the district court's dismissal of this action with prejudice", *infra* at A-6, ¶2.

## ARGUMENT

### Part I. The Alleged Federal or Multi-State Conspiracy

1. The petitioner maintains that there is a multi-state, and conceivably a federal conspiracy against him working in the United States if he refuses to support the procedure of abortion or work in a state of involuntary servitude. "And for me, that utterance may be given unto me, that I may open my mouth boldly, to make known the mystery of the gospel,"

Ephesians 6:19, King James Bible. The petitioner will be bold in his assertion that the alleged conspiracy outlined in this petition, was motivated to exploit the petitioner's life over a controversial abortion, in 1994, that the petitioner opposed with all his soul. *Roe v. Wade*, 410 U.S. 113 (1973) legalized this still controversial procedure. "To prove motive, evidence of a defendant's other crimes, wrongs, or acts may not have to be similar to the offense with which the accused is charged in order to be admissible,", U.S. v Johnson, 525 F.2d 999, cert denied 424US920.

2. The alleged conspiracy has the possibility of building the Federal EEOC's ability to prevent discrimination. In addition, the suggestions, in this petition would enforce former President Ronald Reagan's personal beliefs in protecting human life, while inside the womb, and building an agency, the EEOC, that truly has the tools to function.

3. The petitioner alleges a conspiracy, in violation of: 42 USCS § 1983, § 1985, § 1986, 2000 e et. seq., and numerous federal criminal codes, such as 18 USCA § 241, as well as Amendment XIV, U.S. Constitution, will now be addressed.

(a) On Easter Sunday, 1984, the petitioner began dating Ms. Monica Taboada from Lima, Peru. She did not want her parents to know that she dated a man from Bolivia who was completing his internship with the IMF in Washington, D.C.. One of Bolivia's capitals is LA PAZ, see *supra* at [24]. The alleged conspiracy would terminate if the petitioner returned to his ex-wife, or one of the alleged persons being forced at him via stalking. This will not be discussed further. In Spanish, PAZ is Peace, i.e. P, the petitioner's surname, and AZ. The petitioner asserts that the death of his son, and the deaths of approximately 3000 Americans, could possibly rest in peace with this information, and We, as a Nation, could truly prevent another 7Dec41 or 11Sep01.

(b) On 17Jul90, the U.S. Army ordered the petitioner to 1-11 Field Artillery (FA), 199 IN BDE (MTZ), with 9th

Infantry Division (ID) Orders 136-709. The petitioner requested to go to Iraq with the XVIII$^{th}$. The address of Sarah Weddington, attorney of record in *Roe*, supra, was 709 14$^{th}$ Ave in Austin, TX. Also, C.R.S. 18-1-709 is Entrapment in CO. Furthermore, the address of the Women's Rights National Historic Park is 136 Fall Street; Seneca Falls, NY 13148. Thus, simply put, it appears that the petitioner's first unborn child, if a son, would be sacrificed for women's and minority equal employment opportunity, as well as other women's issues. The petitioner supports equality for everyone, and he detests violence; however, he does not, and he never will, support abortion.

(c) The US Army moved 1-11 FA to the Junior Readiness Training Center (JRTC), in Ft. Polk, LA, following the petitioner leaving the unit in 2-92. The 1-141 FA is part of the LA ARNG, and the 1-86 FA is part of the VT ARNG. The petitioner went to the 9$^{th}$ ID Inspector General (IG) at Ft. Lewis, WA prior to his14Feb92 release from active duty. 10 USCS § 141 pertains to the IG. Later, Ms. Schreibman, and her sister, resided at 141 Lyons in Ft. Collins.

(d) From 21-23Apr94, the petitioner met his wife in Denver, CO where they rested at the Lazy L Motel on the first night. The petitioner's American Express statement shows this charge on 24Apr94, or 4-24-94.

(e) The petitioner's son lost his life on 27Sep94 to abortion, and his now ex-wife delivered on 29Sep94. The alleged harassment began immediately upon his return to UNL. The petitioner alleges his son's life was allegedly a tool being used as a weapon for alleged discrimination.

(g) The petitioner reported allegations of police stalking in Lincoln, NE, prior to leaving Lincoln, NE. If the petitioner remembers correctly, police checked up to ensure that this alleged "special attention" ceased in the fall of 1996.

(h) Thus, the stage was now set for the exploitation of the petitioner because he was at a new location, CSU, in Ft. Collins. The petitioner notes that the community prefixes

match his thesis; new area code was 970 which matched the course number of seminar courses at UNL. In addition, the 491 and 484 prefixes matched Apr91 and Apr84. 50 USCS § 1801, Survelliance. 1801 L Street is the address of the main office of the Federal EEOC in Washington, D.C. The petitioner's concerns grew as Ms. McBride released a video with 313 on the squad car. She is from KS, and exit 313 is the Manhattan, KS exit. Chapter 313, US Code contains psychology items, and one of the statutes commences with the billing date of the motel in Boulder, *infra* at A-78. Dr. Rufus Lumry was one of the first scientists to work on the Manhattan project. Jefferson and the LA Purchase and Chase Manhattan Bank went into the petitioners concerns on US security in Summer 2001 . Finally, a Pearl Harbor video, by Faith Hill, and 1995 warnings by CPT Villaquette (sp?), and CPT Young, that the government did not like smart people like him, and the constant conversation about how we knew about 7Dec41 created serious doubts in the mind of this petitioner over security in Aug01.

(i) On 11Sep01, Mr. Colin Powell was in Lima, Peru. The petitioner maintains that although he did not know anything, that personnel within the US were more than aware of the attacks on the World Trade Centers (WTC) in Manhattan, New York City, NY. The petitioner maintains that personnel associated with the abortion movement in the US, and outside our borders, were attempting to draw attention off of the illegal and inhumane manner in which a handful of people use abortion for both political and financial profits in the US.

(j) The infamous area 51 is allegedly in Nevada. The country code to Peru, South America, is 51. Furthermore, the country code to China is 86. The petitioner's religious marriage was on 24Jul86. This was the 12th anniversary of the *Nixon* case. This is allegedly why Officer Lee Harris, University of California at Berkeley Police, told the petitioner that there were two victims in the case of the theft of his government laptop in Aug03, the US Army, and the

petitioner. LA PAZ, means the peace. LA, the eighteenth state, is the home of 1-141 FA; *Roe, supra* at 141 discusses the AMA. Ms. Schreibman lived on 141 Lyons in Ft. Collins, and Lyons is the name of the development where one of the Back to the Future movies is set; the main actor lives in VT; in the Field Artillery, 1-86 is in VT. Again, the petitioner married his now ex-wife in 1986. Thus, a child was allegedly taken; the father's life was exploited for EEO, and in the end the petitioner would be forced to either life

(k) "Silent Fraud", "A fraud arising out of the suppression of the truth is as prejudicial as that which springs from the assertion of a falsehood, and courts have not hesitated to sustain recoveries where the truth has been suppressed with the intent to defraud", *Williams v. Benson*, 141 N.W. 2d. 650 (1966).

(l) In *White v. Colorado*, 115 S. Ct. 127 (1994), the Court discusses "especially heinous, cruel or depraved manner". The local cite is 37 Colo D2d_206. The area code of Seattle, WA, where the Petitioner lost his son in 1994, is 206.

## Part II. Question 1: Adoption of the 300-Day deadline as the filing of the Intake Questionnaire as previously accomplished by the 7th and 9th U.S. Circuit Courts

1. "Agency policy can be developed either by the adoption of general rules or through case-by-case adjudication", *The Judicial Role in Defining Procedural Requirements for Agency Rulemaking*, 87 Harvard Law Review 782 (1974) -- as a first step in ensuring the Federal Equal Employment Opportunity Commission (EEOC) has the authority to actually work, will this Court standardize the commission's policy by adopting the filing of the Intake Questionnaire, if a subsequent charge is filed, as fulfilling the 300 day filing

deadline as at least two U.S. Circuit Courts have recognized in: *Philbin v. General Electric Capital Auto Lease, Inc.*, 929 F.2d 321,322 (7th Cir. 1991) and *Casavantes v. California State University, Sacramento*, 732 F.2d 1441,1442-43 (9th Cir. 1984).

2. On 4Dec00, the petitioner filed an Intake Questionnaire naming CSU as the party that participated in alleged harassment and discrimination prohibited under Title VII of the Civil Rights Act of 1964 and 42 USCS 2000 e et. seq. In the Questionnaire, the petitioner listed Adecco as contributing to the pattern of alleged ongoing harassment. The petitioner filed a previous Intake questionnaire against the Manpower Office in Boulder, CO only, on 27Nov00, and a hearing was immediately set, by the EEOC, for 9Jan01; he was told that all allegations would be reviewed in the 9Jan01 meeting.

3. On, or about, 20Dec00, the petitioner returned to PA to visit family for the Christmas holidays. He obtained a two week assignment, through Manpower, in Carlisle, at Land o Lakes in Mt. Holly Springs, PA. On 22Dec00, the petitioner's mother dropped him off in Carlisle, PA, with one of his bicycles. At approximately 1700 (EST), the petitioner began biking over to the job site, less than six miles away, for the first evening of work. His report time was 1800. The petitioner stopped at a nursery, on PA 34, to check the time because the roads were icy. The nursery was adjacent to either Bonny Brook and PA 34 or Heisners Ln and PA 34. The woman pointed to the clock, and the time was 1730. The petitioner was very close to the job site, and he decided to walk the remainder of the way. The next memory, of the petitioner, is talking to his sister, Christine, a teacher for over twenty years at Rock Hall Elementary School, in Maryland, on the phone from Edgewater Psychiatric Center in Harrisburg, PA.

4. The petitioner alleges that the alleged accident, on 22Dec00, was an attempted murder in retaliation for the 27Nov00 and 4Dec00 Federal EEOC Intake Questionnaires, and the alleged act was in violation of both 18 USCS § 1512(a)(1)(A) and 18 USCS § 1513 (a)(1). The federal statutes apply because the 9Jan00 meeting was with the Federal EEOC in Denver, and a charge filed on 9Jan03, against CSU, would have been turned over to the US Attorney's office, who would know to file against the CO SBA. In addition, he was allegedly picked up at 1755, or 5:55 p.m., from a ditch, in excess of 4 miles from where he was walking in front of an elementary school. The petitioner's mother states that ER personnel informed her that staff administered the drug Haldol because the petitioner allegedly was asking for "ET". In essence, the petitioner alleges that persons associated with the Entertainment Industry, i.e. "Entertainment Tonight", abbreviated "ET", were allegedly directing traffic. It is possible to trigger the speech, of a person, using radio frequency, if the voltage associated with the transmitted signal is high enough, and the petitioner alleges this occurred. The drug, Haldol, causes coma in excessive dosages. The medical record does not reflect the drug's use which violates 35 P.S. § 780-112 (b) and 35 P.S. § 780-113(a)(14)(i-iii). Please review the 1995 movie "While you were Sleeping".

5. Edgewater Psychiatric Center held a meeting on 26Dec00 where a judge did not permit the petitioner to be released; therefore, the petitioner contacted the Federal EEOC on, or about, 8Jan01, after his second hearing ,and subsequent release, and he requested the EEOC fax number; Kathy simply changed the meeting to 6Feb01 without the fax being sent. The petitioner has the fax cover sheet from "CopyMax, Inside OfficeMax". The EEOC filed charge number 320A10464 on 6Feb01; however, Adecco's name was not on the charge of discrimination. This charge was filed 301 days from the 12Apr00 date of alleged last discrimination

recorded in the 4Dec00 questionnaire; however, on 2Mar01, the petitioner notified the EEOC, in writing, that the last date was in fact 18Apr00, infra at A-31, ¶1. Thus, the EEOC filed the charge on the 295th day following the last day of alleged discrimination. The EEOC did not re-open the investigation.

6. This magistrate judge cites unreported opinions of the Tenth Circuit, *infra* at A-25, footnotes: "The Tenth Circuit has noted that '[c]ourts are split on whether such an informal questionnaire can be deemed a timely filing when it is later verified by a formal charge,' E.g., *Barzanji v. Sealy Mattress Mfg Co*, 2001 WL 273237 (10th Cir. Mar 20, 1999);;*Welsh v. City of Shawnee*, 1999 WL 345597 (10th Cir. June 1, 1999). The Tenth Circuit, however, has not yet had to decide this issue, *Barzanji*, 2001 WL 237237, 2." If the 10th Circuit allowed for the submission of the questionnaire, the EEOC would have been forced to turn the case over to the US Attorney as discussed *infra* in Arg. part III, because 4Dec00 is 237 days following 12Apr00, the last date of discrimination as initially stated in the questionnaire.

7. As a first step, to giving the Federal EEOC the tools to operate and prevent discrimination:

(a) the petitioner requests this Court adopt the filing of the Intake Questionnaire as meeting the 300 day deadline if a charge is later filed.

(b) Subsequently, the petitioner requests: (1) the EEOC implement a sign in roster when an individual requests a questionnaire, and (2) the EEOC immediately assign an officer to the aggrieved individual, ensuring the questionnaire is returned within 10 days. Finally, (3) the EEOC would have the flexibility to assign a hearing after the official had a preliminary amount of time to review the questionnaire. The officer would minimize the amount of time between the receiving the questionnaire and the hearing; however, it would be the agency responsibility to minimize this time.

(c) Finally, a future individual, backed by the Federal EEOC, would request this Court implement the initial receipt of the intake questionnaire, and the official sign in, as meeting the 300-day deadline, if a charge is subsequently filed by the EEOC. This would severely hinder the allegations of retaliation and involuntary servitude discussed in this petition. In addition, it would provide the EEOC latitude to operate if their case load was overbearing.

8. Discrimination handicaps a free society. We, as the American people, can not stop it without the assistance, and guidance, of the nine members of this Court.

**Part III. Question 2: Did the EEOC intentionally violate their policies, to further case law, or can the Petitioner's failure to name the SBA, as the Defendant, be excused by Equitable estoppel?**

1. The petitioner named CSU as the defendant versus the Colorado State Board of Agriculture when he filed the action on 23May01, *Roberts v. Colorado State Board of Agriculture*, 998 F. 2d 824 (1993), *Lewis v. State Board of Agriculture,* 335 P 2d. 546 (1959). Is the EEOC responsible for violating their policies? Or, is the petitioner's mistake in not naming the SBA, vs Colorado State University, as the Defendant, covered by Equitable estoppel?

2. The petitioner maintains that pursuant to the facts in Argument, Part II, *supra*, it was the EEOC's responsibility to turn this case over to the U.S. Attorney's office once the case is not been settled within 30 days. "In the case of the respondent which is a government, government agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the

appropriate United States district Court," 31 ALR Fed 657, 663 § 1[c], 42 USCS § 2000 e-3 (f).

3. However, the EEOC hastily dismissed the petitioner's charge within 10 days without confirming any facts; the fact is the charge statement contained three wrong pieces of information due to the difficulties the petitioner experienced relating facts to the investigating officer, and her willingness to place them unto the charge statement. In fact, the initial date of alleged discrimination occurred on 29Aug97, and the last alleged date of discrimination, allegedly occurred on 18Apr00 vs 12Apr00. Thus, the Commission, upon receipt of the 2Mar01 letter, clearly violated their own regulations, unless they were trying to further case law discussed *supra* in argument, part II at ¶ 1. "Most courts which have allowed departures have based their conclusions on findings that the regulation which was violated was intended to govern internal agency procedure, rather than to protect any interest of the objecting party, R. Parker, Administrative Law 196 (1952)", *Violations by Agencies of their Own Regulations,* 87 Harvard Law Rev 629, 629 (1974). "Instead the courts seem to have been equating 'reliance' with the more general principle: the persons whose interests a regulation is meant to promote the 'right' or entitled' to have it enforced," *Violations*, supra at 632, Geiger v. Brown, 419 F. 2d 714, 719 (D.C. Cir 1969).

4. Can this Court consider Equitable estoppel as a reason for the petitioner's alleged failure to name the SBA instead of CSU as the defendant? "Equitable requires that "the defendant takes active steps to prevent the plaintiff from suing in time", *Soigner v. American Bd. of Plastic Surgery*, 92 F. 3d 547, 554 (7th Cir. 1996). Had the petitioner not been suspiciously hospitalized, on 22Dec00 in PA; he would have worked for the two week plus time period, and he would have fixed his automobile transmission, and returned with his belongings vs with a single suitcase on the greyhound bus.

In these belongings are his pay stubs showing the Colorado Department of Agriculture at the top! The petitioner's car brings up additional information which appears to confirm the alleged motive of the respondent. Why is the CSU parking sticker no. 0494? Once again, the petitioner's ex-wife conceived in Apr94. Please ask the question about Mr. W. Schriebman's possible connections in the psychiatric community; previously, in Jul99, the petitioner was told, during an alleged illegal incarceration, by Officer Gunther, that "it is a small community, you better live in PA if that is where he wants you".

**Part IV. Question 3: Failures in Service of Process.**

1. Is the failure of proper service more clearly a result of Equitable estoppel?

2. Colorado law requires service of process to be accomplished IAW Fed. R. Civ. P. 4(j) and Colo. R. Civ. P. 4(e)(10)(b). Thus, "the summons and the Complaint must be served (1) to its chief executive officer, namely, President Yates, or (2) to the principal officer, chief clerk, or other executive employee thereof and the attorney general".

3. The pro se petitioner maintains that he knew the procedures for serving the university in July01; however, after contacting counsel for the defendant, he remembers Mr. Pendleton informing the petitioner to contact the attorney general's office. Upon gaining access back to campus, the petitioner learned that both arms of the government needed to be served. The petitioner finally obtained employment the week prior to 15Oct01 at Target, in Boulder, CO, through Labor Ready. The job was to last all week. On Wednesday, 11Oct01, the petitioner's assignment was cut short while others stayed on, despite the petitioner's work ethic. The petitioner therefore only had enough cash to serve either CSU

or the CO Attorney General. The petitioner called Mr. Pendleton again, and he spoke with a secretary who allegedly informed him, perhaps confirming Mr. Pendleton's July statement, that CSU did not receive process. Therefore, for security, the petitioner served the attorney general, and he attempted to have a friend serve CSU and the office of the SBA on campus. She did not affect proper service because she failed to give the Summons and the Complaint on 15OCT01.

4. "A pro se plaintiff had acted diligently in traveling to the courthouse to inquire in person as to the requirements for service of process, but was either misinformed or misunderstand what he had been told; the plaintiff's explanation for untimely service demonstrated that he sought to learn the appropriate method for service of process and believed that he had done so, *Poulakis v. Amtrak*, 139 FRD 107, (1991, ND). Please ask this question: Did CSU know that a complaint was filed after the efforts by the petitioner? Once the petitioner showed that he was taking steps to serve the attorney general, is it possible that he was intentionally let off the target team to prevent proper service of process with a simple phone call from any number of possible individuals? If this is the case, isn't this the very definition of Equitable estopple?

**Part V. Question 4: Adoption of the "State Created Danger Theory" to prevent Involuntary Servitude and a <u>multitude of other crimes.</u>**

1. The petitioner requests this Court adopt the "State Danger Theory" discussed, by the U.S. 5th Circuit, in *Greene v. Plano*, L.S.D., 227 F. Supp.2d 615, 618 (2002): "The Fifth Circuit has only recognized the state danger theory of liability in situations where the state has created or increased an individual's danger from third persons." *McClendon v. City of Columbia*, 258 F.3d 432, 437-38 (5th Cir 1995)

(police officer provided weapon to confidential informant which informant used to shoot plaintiff); *Piotrowski v. City of Houston*, 51 F.3d 512, 514 (5th Cir. 1995) (police officers failed to warn plaintiff of a third party's plot to murder her).

2. "The "State Danger Theory" does not apply when harm is inflicted by defendant state actor rather than third party", *Greene* supra at 619. This is not the case here.

3. The petitioner argues that this Court can take an alleged disaster and turn in into an excellent opportunity for the U.S. people. On January 27, 2000, two men attempted to choke the petitioner in Ft. Collins immediately after turning in a 15 page investigation to Mr. Taylor of the Ft. Collins DA's office; in addition, the petitioner contacted the Denver and Ft. Collins offices of the Federal Bureau of Investigation. The petitioner feared the second man was attempting to kill him. The petitioner asserts that 18 USCS § 1512(b)(3) "hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States,..." applies here. If the alleged Federal Conspiracy outlined supra, pursuant to 18 USCS § 241, is confirmed, than the federal statutes should apply. Here, the "state" placed the petitioner at risk for 3rd party, private violence by failing to check the integrity of Ms. M. Schreibman's allegedly false allegations.

4. On the petitioner submitted the Intake Questionnaires discussed *supra* to the US Federal Equal office in Denver, CO. Again, the petitioner maintains that the alleged arranged accident on December 22, 2000, can be used to benefit the U.S. people. The petitioner maintains that people associated with his father, Roger Persik, arranged this accident in retaliation for submitting the Questionnaire which is in violation of 18 USCS § 1513 (a) (1) which pertains to "retaliating against a witness, victim, or an informant, *supra*. *DeShaney v. Winnebago County Department of Social Services*, 109 S.Ct. 998, 998-999 (1989), states: "Mother of a

child who had been beaten by father…", and "Petitioner is a child who was subjected to a series of beatings by his father…" The Petitioner's father lived in the same general area as the location of his temporary employer in Mt. Holly Springs. The petitioner's father stated, circa 1985, threatened to kill him in 1985, and the local police took no action; Roger Persik threatened revenge on his children years later for all children refusing to associate with him. The petitioner's father beat the petitioner's mother, and he choked the petitioner's oldest sister until she could not breathe on at least one occasion; in 1977, the petitioner stopped his father from choking his own father to death; in addition, the petitioner's father stated that "I'll show you that all of your education will be worthless, circa 1985". The petitioner cites Matthew 23:9, King James Bible, supra: "And call no *man* your father upon earth: for one is your Father, which is in heaven." Colorado State University Police department's failure to stop Walter Schreibman et. al. opened up the door for violence by private, third party individuals; thus, this reinforces the petitioner's argument to adopt the "State Danger Theory".

5. In *DeShaney*, *supra* at 998, this Court states: "Justice Rehnquist, held that State had no constitutional duty to protect child from his father after receiving reports of possible abuse". How can we, as pro life individuals pray that this Court overturn *Roe, supra* if we do not show the mother of our children that we will do everything we possibly can to protect both the and their children. Adoption of the "State Danger Theory" will serve to help reverse the damage done in *U.S. v. Morrison*, 529 U.S. , Landmark Briefs and Arguments of the Supreme Court of the United States Constitutional Law, 1999 Term Supplement, Gerald Gunther et. al. 282, (2000), where this Court discusses "gender motivated violence". This violence often is also directed at those men opposed to men participating in such violent behavior. The petitioner reminds this Court of the

numerous State's supporting the 1994 Violence Against Women Act".

6. In *Johnson v. Dallas Independent School District*, 38 F.3d 198, 198 (1994) the Court states: " even assuming constitutional soundness of state-created danger theory for imposing § 1983 liability, no claim was stated in connection with death of high school student hit in the head by stray bullet shot by non-student…: it was questionable whether high school environment was 'dangerous,'". In this case, it was the failure of the state, at CSU, and the subsequent failure of the U.S. Attorney's Office on 25Aug00, that endangered the petitioner's life on 22Dec00 in Mt. Holly Springs, PA. However, the bigger picture is what set up the opportunity for the exploitation of the petitioner's life. This occurred on 27Sep94 when the "State" allegedly violated R.C. W. 9.02.120, Unauthorized Abortions, due to the legalization of abortion in *Roe*, supra.

**Part VI. Question 5: Can this Court Overturn *Roe v. Wade*, by way of a Religious and Gender Employment Discrimination argument by adding a sixth class of protected persons under Title VII.**

1. Can this Court order a new class of protected individuals be recognized by the U.S. Federal Equal Employment Office

2. Using the same argument presented in *Judicial Role..., supra* -- the new protected class is the unborn which represent nearly all future employees, in every job, in the United States, thus, overturning *Roe*, *supra.*. As a class, they are always numerically a minority at any given time period, i.e. simply add up all pregnant mothers in the USA.

3. Please allow a little latitude in the introduction. "Yet the number of children of Israel shall be as the sand of the sea, which cannot be measured nor numbered; and it shall come

to pass, that in the place where it was said unto them, Ye are not my people, there it shall be said unto them, Ye are the sons of the living God." Hosea 1:10, Holy Bible, King James Version, Nelson Regency, Thomas Nelson Publishers, 1990.

4. The petitioner can suggest that his now ex-wife conceived their unborn child on, or about, April 22, 1994. "The third meeting of the preparatory commission for the Cairo conference (Prep-Com III) met from April 4 to 22, 1994." "The U.S. embassy to the Holy See had received a message from the Undersecretary of State Timothy Wirth's office, reiterating that U.S. policy at Cairo was to promote an unrestricted abortion right, but suggesting that this need not be mentioned to the "host country" if its reaction might be negative." Witness to Hope, The Biography of Pope John Paul II, George Weigel, Harper Collins Publishers, New York, NY 2001, pg. 719.

5. On 27Sep94, the petitioner's unborn son lost his life to the procedure of abortion. The petitioner alleges that his son was illegally taken pursuant to RCW 9.02.120. Unauthorized abortions – Penalty. The petitioner alleges that it is possible that the doctor incorrectly diagnosed his unborn son with hydrocephalus for the purposes of furthering the Clinton/Gore agenda limiting human life on Earth. "The Sep94 World Conference on Population and Development in Cairo was ambitious, and was shared by officials of the United Nations Fund for Population Activities [UNFPA] and major international nongovernmental organizations [NGOs] such as the International Planned Parenthood Federation." *Witness to Hope, supra,* pg. 715. "Then spake the Lord to Paul in the night by a vision, Be not afraid, but speak, and hold not thy peace." Acts 18:9, Holy Bible. Why is the petitioner being denied lawful rights for loving the unborn?

**Part VIII. Question 7: Application for a Stay Pending Class Certification in the District Court for the District of Colorado.**

1. Can the petitioner apply for a stay, in a separate motion, pursuant to U.S. Supreme Court Rule 23, to apply for class certification, and amend his complaint to remove any monetary requests?

## CONCLUSION

The petitioner prays that this honorable Court grants this Petition. Please show the United States the beauty that exists when WE, as an entire Nation, come together and lay the foundation that will ensure all children, and our children's children, the America that our founding fathers only dreamed and wrote about. Furthermore, the petitioner just discovered volumes of evidence that support his conspiracy theory.

Respectfully submitted this 22nd day of January 2004.

Raymond Charles Persik
Pro Se
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**FILED**

United States Court of Appeals
Tenth Circuit

MAR 3 2003

PATRICK FISHER
Clerk

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**UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT**

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RAYMOND CHARLES PERSIK,
Plaintiff - Appellant,

v.

No. 02-1204
(D.C. No. 01-WM-934-(MJW))
(D. Colorado)

COLORADO STATE UNIVERSITY;
ADECCO COLORADO,
Defendants - Appellees.

ORDER AND JUDGMENT

Before EBEL, HENRY, and MURPHY, Circuit Judges.[1]

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Plaintiff-appellant Raymond Charles Persik appeals pro se from the district court order dismissing his Title VII employment discrimination claims against defendants-appellees Colorado State University (CSU) and Adecco Colorado (Adecco). Our jurisdiction arises under 28 U.S.C. § 1291. We affirm.

Mr. Persik was a graduate student and teaching assistant in the CSU chemistry department and also an employee of Adecco, a temporary employment agency. He filed a charge against CSU with the Equal Employment Opportunity Commission (EEOC), alleging that he had been subjected to discrimination based on his gender and also his religious/political pro-life beliefs. After the EEOC dismissed

[1]This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

the charge, Mr. Persik filed a complaint in district court naming both CSU and Adecco as defendants. For numerous reasons, the magistrate judge recommended dismissing the entire action with prejudice. The district court reviewed de novo all portions of the magistrate judge's recommendation to which objections were filed, then adopted the recommendation.

**Action against CSU**

In the district court, CSU moved for dismissal contending that (1) service of process was ineffective and (2) even if service had been accomplished, CSU is not an entity that is capable of being sued. The magistrate judge agreed with CSU that service was defective. He did not recommend, however, that the case be dismissed without prejudice on that basis. Instead, he recommended dismissal with prejudice because CSU is not a proper defendant, determining that Mr. Persik should have sued the Colorado State Board of Agriculture (SBA), the entity in financial control of CSU. Mr. Persik filed objections to the magistrate judge's recommendation, but did not address the issue of CSU's status as a defendant. Rule 72 of the Federal Rules of Civil Procedure provides that when a magistrate judge issues a ruling on a dispositive pretrial motion, a party has ten days after service to "serve and file specific, written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b). The objections must be specific enough to focus the district court's attention on the factual and legal issues in dispute. See United States v. 2121 E. 30th St., 73 F.3d 1057, 1060 (10th Cir. 1996). A failure to file a specific objection to a magistrate judge's report and recommendation generally constitutes a waiver of appellate review. See id. at 1060-61. Although this court recognizes an interests of justice

exception to this "firm waiver rule," see id. at 1060, Mr. Persik has not offered any reasons why the interests of justice weigh against application of the waiver rule in this case. Accordingly, Mr. Persik has waived appellate review of the CSU dismissal.

In any event, a de novo review of the ruling would lead to the same result. Under the statutory scheme which created SBA and CSU as separate entities, the SBA is given "general control and supervisory power including power to adopt regulations to secure the successful operation of the university, hiring authority, and complete financial control over CSU." *Roberts v. Colo. State Bd. of Agric.*, 998 F.2d 824, 827 (10th Cir. 1993) (quotations and ellipses omitted). "SBA was constituted as 'a body corporate, capable in law of suing and being sued.'" Id. (quoting Colo. Rev. Stat. § 23-30-102). However, "the statutes and constitutional provisions pertaining to CSU contain no similar grant." Id. CSU is "powerless to comply with [a] district court's order on its own," id., and is not an entity capable of being sued, id. at 826 n.1. Because CSU is not subject to suit and cannot provide the relief requested by Mr. Persik, the dismissal of CSU is correct as a matter of law.

**Action against Adecco Colorado**

Adecco moved for dismissal of Mr. Persik's claims on three grounds: (1) Mr. Persik did not include Adecco in his EEOC charge; (2) the EEOC charge was untimely; and (3) the district court complaint was untimely as well as improperly served on Adecco. The magistrate judge agreed with all of Adecco's arguments and recommended dismissal on each of the asserted grounds. Upon its review, the district court determined that the omission of Adecco in the EEOC

charge meant that the case should be dismissed for failure to exhaust administrative remedies.

The filing of a discrimination charge with either a state or federal administrative agency is a jurisdictional prerequisite to filing a Title VII discrimination suit in federal court. *Seymore v. Shawver & Sons, Inc.*, 111 F.3d 794, 799 (10th Cir. 1997). The charge provides the agency with the opportunity to conciliate the claim, and gives the charged party notice of the alleged violation. Id. "Thus, a plaintiff normally may not bring a Title VII action based upon claims that were not part of a timely-filed EEOC charge for which the plaintiff has received a right-to-sue letter." Simms v. Okla. ex rel. Dep't of Mental Health & Substance Abuse Servs., 165 F.3d 1321, 1326 (10th Cir. 1999).

The omission of a party's name from the EEOC charge, however, does not automatically mandate dismissal of a subsequent Title VII action. *Romero v. Union Pac. R.R.*, 615 F.2d 1303, 1311 (10th Cir. 1980). To determine whether an action should be dismissed for failure to name a defendant, the court considers four factors:

1) whether the role of the unnamed party could through reasonable effort by the complainant be ascertained at the time of the filing of the EEOC complaint; 2) whether, under the circumstances, the interests of a named are so similar as the unnamed party's that for the purpose of obtaining voluntary conciliation and compliance it would be unnecessary to include the unnamed party in the EEOC proceedings; 3) whether its absence from the EEOC proceedings resulted in actual prejudice to the interests of the unnamed party; [and] 4) whether the unnamed party has in some way represented to the complainant that its relationship with the complainant is to be through the named party.

Id. at 1311-12 (quoting *Glus v. G.C. Murphy Co.*, 562 F.2d 880, 888 (3d Cir. 1977)).

A consideration of these four factors in light of the appellate record reveals no reason to excuse Mr. Persik's failure to name Adecco in the charge. Plainly, CSU and Adecco are not related in any way. The district court properly dismissed Mr. Persik's claims against Adecco for failure to exhaust administrative remedies.

Conclusion

The district court's dismissal of this action with prejudice is AFFIRMED. Mr. Persik's motion to file a reply brief out of time is GRANTED. His motion to supplement the district court record is DENIED; his motion for leave to file a reply to Adecco's response to the motion to supplement the record is GRANTED.

ENTERED BY THE COURT
PER CURIAM

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR – 5 2002

JAMES R. MANSPEAKER
Clerk

**IN THE UNITED STATES DISTRICT COURT**

FOR THE DISTRICT OF COLORADO
JUDGE WALKER D. MILLER

Civil Action No. 01-WM-934

RAYMOND CHARLES PERSIK,
Plaintiff(s),

v.

COLORADO STATE UNIVERSITY AND ADECCO COLORADO,

Defendant(s).

---

ORDER ON RECOMMENDATION OF MAGISTRATE JUDGE

---

Miller, J.

This matter is before me on the recommendation of Magistrate Judge Michael J.Watanabe, issued January 23, 2002, that defendants' motions to dismiss be granted. Plaintiff filed timely objections to this recommendation and is entitled to de novo review. **28 U.S.C. § 636(b).**

I have reviewed de novo the record in this case including defendants' motions to
dismiss, the recommendation, and plaintiff's objections. For the reasons stated below, the recommendation is accepted.

Discussion

Plaintiff filed a complaint alleging various violations of Title VII on May 23, 2001. Defendant Colorado State University (CSU) filed a motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(2), (3), (4), (5) and 4(m) on November 1, 2001. Defendant Adecco Colorado (Adecco) filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(5)or (6) on November 21, 2001.

Magistrate Judge Watanabe recommends that defendant CSU's motion to dismiss be granted because CSU is not the proper defendant and the court lacks jurisdiction over CSU. Fed. R. Civ. P. 12(b)(2). The Colorado legislature established CSU and the Colorado State Board of Agriculture (SBA) as separate entities. SBA has control and supervisory power over CSU and is capable of being sued. See Colo. Rev.Stat. §§ 23-30-102, 108, and 109; *Roberts v. Colorado State Board of Agriculture*, 998 F.2d 824 (1993). CSU is not the proper defendant. *Drake v. Colorado State Board of Agriculture*; 953 F. Supp 1150 (D.Colo.1997) ("The SBA, as the entity that controls CSU, is the proper defendant to any suit against the university.").

Plaintiff has failed to object to this portion of the recommendation issued by Magistrate Judge Watanabe. Accordingly, the recommendation is accepted and CSU is dismissed as a defendant in this case.

Magistrate Judge Watanabe recommends that Adecco's motion to dismiss be granted because plaintiff failed to include Adecco as a defendant in his charge filed with the EEOC. Plaintiff admits that Adecco should have been included in the EEOC charge. Plaintiffs Objections, at 8. Plaintiff states, however, that this oversight should be excused because he informed Adecco of the charge of discrimination in a timely fashion.

A plaintiff must file a charge against a party with the EEOC before he can sue that party under Title V11. *Knowlton v. Teltrust Phones, Inc.*, 189 F.3d 1177, 1185 (10th Cir. 1999). Nevertheless, a Title VII action may proceed where there is a clear identity of interest between the charged party and the unnamed party. *Id.* To determine whether an identity of interest exists between the parties, the court must weigh the following factors: (1) whether the role of the unnamed party could have been ascertained by the complainant at the time the EEOC charge was filed; (2) whether the interests of the named party are so similar to the unnamed party as to make it unnecessary to include the unnamed party in the EEOC complaint; (3) whether its absence from the EEOC proceedings resulted in actual prejudice to the unnamed party; and (4) whether the unnamed party has represented to the complainant that its relationship is to be through the names party. *Romero v. Union Pac. R.R.*, 615 F.2d 1303, 1312 (10th Cir. 1980).

In this case, consideration of the Romero factors mandates dismissal. Adecco is a temporary employment agency which employed plaintiff so he clearly knew of Adecco's identity at the time he filed his EEOC charge. Adecco is separate, distinct, and unrelated to CSU. Adecco has presumably suffered actual prejudice by not being allowed to participate in the EEOC proceedings. Finally, Adecco never represented to plaintiff that its relationship was to be through CSU, the named party. Accordingly, plaintiffs claims against Adecco should be dismissed for failure to exhaust his administrative remedies as to Adecco since it was not named in the EEOC complaint, Fed. R. Civ. P. 12(b)(6).

Accordingly, it is ordered:

1. Magistrate Judge Watanabe's recommendation, issued January 23, 2002, is accepted and plaintiff's objections are overruled.
2. Defendant CSU's motion to dismiss (#18), filed November 1, 2001, is granted.
3. Defendant Adecco's motion to dismiss (#25), filed November 21, 2001, is granted.
4. Plaintiffs motion to deny dismissal (#21), filed November 13, 2001, is denied.
5. This case shall be dismissed with prejudice.

DATED at Denver, Colorado, this "s/5th" day of April 2002.

BY THE COURT:

"s/Walker D. Miller"
Walker D. Miller
United States District Judge

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JAN 23 2002

JAMES R. MANSPEAKER
Clerk

BY "s/SLM"
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 01L WM 934

RAYMOND CHARLES PERSIK,
Plaintiff,

v.

COLORADO STATE UNIVERSITY, et al.,
Defendants.

---

RECOMMENDATIONS

ON DEFENDANT'S [CSU] MOTION TO DISMISS (Docket No. 18), PLAINTIFF'S MOTION TO DENY DISMISSAL OF TITLE VII CASE AGAINST COLORADO STATE UNIVERSITY (Docket No. 21 as amended by Docket No. 23), and DEFENDANT ADECCO'S 12(B)(5) MOTION TO DISMISS FOR INSUFFICIENCY

OF PROCESS, OR IN THE ALTERNATIVE, 12(B)(6) MOTION TO DISMISS WITH PREJUDICE (Docket No. 25)
and

ORDER ON DEFENDANT CSU'S MOTION FOR LEAVE TO FILE REPLY
(Docket No. 24)

---

**MICHAEL J. WATANABE**
**United States Magistrate Judge**

This case is before this court pursuant to an Order of Reference issued by District Judge Walker D. Miller on September 25, 2001. (Docket No. 11).

The pro se plaintiff filed a rambling, disjointed Title VII Complaint on May 23, 2001. (Docket No.3). That same day Magistrate Judge Boland issued an order directing the Clerk to commence a civil action and granted the plaintiff leave to proceed pursuant to 28 U.S.C. §1915. (Docket No. 2).

In a Minute Order issued on September 28, 2001, and filed on October 1, 2001 (Docket No. 14), this court granted the plaintiff's Motion for Extension of Time Pursuant to Rule 4(m) Federal Rules of Civil Procedure, which was filed on September 20, 2001 (Docket No. 9). The plaintiff was given up to and including October 15, 2001, to serve the defendants and was directed to file with the Clerk of the Court proof of service for each defendant on or before October 15, 2001. (Docket No. 14). On October 15, 2001, the plaintiff filed what purports to be proof that he served the defendants. (Docket No. 15).

Now before the court are the following dispositive motions. First, defendant Colorado State University ("CSU") filed a-Motion to Dismiss on November 1, 2001, pursuant to Fed. R. Civ. P. 12(b)(2), (4), (5) and 12(m).[1] (Docket No. 28). In that same motion, CSU also moved to stay all proceedings until the jurisdictional and service issues are decided, and that motion for a stay was granted pursuant to a Minute Order issued by this court on November 2, 2001, and filed on November 5, 2001 (Docket No. 20). Consequently, the Rule 16 Planning/Scheduling Conference that was set to be held on November 20, 2001, at 8:00 a.m. was vacated. (Docket No. 20). In that Minute Order the plaintiff was directed to file a Response to the Motion to Dismiss on or before November 30, 2001. (Docket No. 20). On November 13, 2001, the plaintiff filed a Motion to Deny Dismissal of Title VII Case Against [CSU] and Grant Stay of All Proceedings (Docket No. 21), which apparently is his response to defendant CSU's motion.

Also before the court is Defendant Adecco's 1 2(b)(5) Motion to Dismiss for Insufficiency of Process or, in the Alternative, 12(b)(6) Motion to Dismiss with Prejudice, which was filed on November 21, 2001 (Docket No. 25), and which was supplemented on November 29, 2001 (Docket No. 29). Plaintiff filed a "Reply" to that motion (Docket No. 30), which the court will refer to as plaintiff's Response. In addition, plaintiff subsequently filed an amendment to his Response (Docket No.34) and an amendment to his

---

[1]The court notes that there is no Rule 12(m) of the Federal Rules of Civil Procedure, but it appears from the substance of the defendant's argument that defendant means Rule 4(m).

amendment to his Response (Docket No. 36). With leave of court (Docket No. 33), Adecco filed a Reply (Docket No. 35).

Defendant CSU's Motion to Dismiss

CSU correctly. asserts that service may be accomplished upon it by delivering the summons and the Complaint (1) to its chief executive officer, namely, President Yates, or (2) to "the principal officer, chief clerk, or other executive employee thereof" and the attorney general. See Fed. R. Civ. P. 4(j); Colo. R. Civ.P.4(e)(10)(b). Furthermore, CSU notes that under either the federal rule or state rule, service of process requires service of a summons and the Complaint.

CSU acknowledges that a summons and a Complaint were delivered to the Colorado Attorney General on October 12, 2001, but it asserts that that is inadequate service under either the state rules or the federal rules because in his "Proof of Service" (Docket No. 15) plaintiff acknowledged that he did not deliver a copy of the Complaint to any person at CSU (Docket No. 15 at ¶ 1(a)(1) and (2)). In fact, the plaintiff acknowledged that his failure is invalid service of process. (Docket No. 15 at ¶ 1 (b)).

Finally, CSU disputes the plaintiff's claim that a secretary in the CSU legal office told him that he could serve the attorney general's office. Instead, the secretary allegedly simply referred plaintiff to the attorney general's office if he had .questions about service. In any event, CSU maintains that the secretaries in the CSU legal office are not authorized to give, and do not give, legal advice.

In sum, CSU contends that because the plaintiff failed to effect service of a summons and the Complaint upon the

chief executive officer of CSU, the service of process on CSU is ineffective, and this matter must be dismissed for lack of personal jurisdiction, insufficiency of process, and insufficiency of service of process pursuant to Fed. R. Civ. P. 12(b)(2), (4), and (5). CSU also asserts that the action must be dismissed because the plaintiff did not serve process upon CSU within 120 days of the filing of his Complaint on May 23, 2001.

Finally, CSU contends that even if the plaintiff had accomplished service on it, it is not an entity that is capable of being sued. (Defs.' Mot. at 3, citing Roberts v. Colorado State Board of Agriculture, 998 F.2d 824, 827 (10th Cir. 1999)).

In his rambling, and at times nonsensical, response, plaintiff admits that he did not serve President Yates, but plaintiff seems to argue that service nonetheless should be deemed acceptable. It appears that plaintiff is arguing that Mr. Laurence Pendleton (presumably CSU's in-house counsel) improperly refused to waive service pursuant to Fed. R. Civ. P. 4(d), thereby evading service, and thus somehow allowed the alleged employment discrimination to continue. Also, plaintiff claims that a friend of his had the Complaint on her person on October 15, 2001, but forgot to give one to the CSU legal office. That friend was also allegedly threatened by some unknown person on October 15, 2001, when she requested to deliver a summons and Complaint to someone named Heidi Young. In addition, plaintiff asserts that since he is proceeding pursuant to 28 U.S.C. §1915, it became the responsibility of a governmental agency to save costs for the people of the State of Colorado by waiving service. Furthermore, he contends that because his employment was terminated, he did not have funds to serve President Yates, although he admits that lack of funds,

in itself is not enough to justify failure to serve correctly. Plaintiff asks the court not to dismiss the action based on the fact that CSU was aware that a Complaint was filed on May 23, 2001, in this court. Plaintiff also requests that the defendant or the State of Colorado be fined $2000 for attempting some sort of fraud and that some purported false statement be submitted to the U.S. Attorneys Office. (Pl.'s Resp. at 4, 10).

On November 20, 2001, CSU filed a motion for leave to file a reply and tendered its Reply to plaintiff's response. CSU asserts in its Reply that the plaintiff's request for a fine is unfounded and frivolous, that there is no obligation placed upon any governmental agency to waive service, and that to this day, plaintiff has failed to serve CSU properly, despite being given an extension of time to October 15, 2001, to complete service.

The court finds that the plaintiff has not properly served CSU. While the plaintiff has had the Attorney General served with a copy of the summons and the Complaint, he has not served the Complaint upon CSU's principal officer, chief clerk, or other executive employee. Merely serving a summons is inadequate.

Plaintiff, in fact, admits that he has not effectively served CSU, but he seems to argue that the court should deem service acceptable. It is recommended that the court not do so. There is no evidence that CSU evaded service. Rather, CSU simply did not sign a Waiver of. Service, and CSU correctly asserts that there is no obligation placed upon any governmental agency to waive service. In fact, CSU correctly notes that governmental entities are not included in Fed. R. Civ. P.4(d)(2), which discusses the duty of certain defendants to avoid costs. See also Advisory Committee Notes to Rule

4(d), 1993 Amendments ("The request for waiver of service may be sent only to defendants. subject to service under subdivision (e) [individuals within a judicial district of the U.S.], (f) [individuals in a foreign country], or (h) [corporations and associations]. The United States is not expected to waive service for the reason that its mail receiving facilities are inadequate to assure that the notice is actually received by the correct person in the Department of Justice. The same principle is applied... to other entities subject to service under subdivision (j) [foreign, state, or local governments]. Moreover, there are policy reasons why governmental entities should not be confronted with the potential for bearing costs of service in cases in which they ultimately prevail...").

Furthermore, CSU is correct in its assertion that the plaintiff has not effectuated service in a timely manner. Pursuant to Fed. R. Civ. P. 4(m):

> [i]f service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the -plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period ....

Fed. R. Civ. P. 4(m). This court granted the plaintiff an extension to October 15, 2001, to complete service (Docket No. 14), but to date he still has not done so and has not shown good cause for the failure.

The court notes that "[t]he general rule is that 'when a court finds that service is insufficient but curable, it generally should- quash the service and give the plaintiff an opportunity to re-serve the defendant.'" Pounds v. Department of Interior, 2001 WL 520848, at * 1 n.2 (10th Cir. May 16, 2001) (quoting Pell v. Azar Nut Co., 711 F.2d 949, 950 n.2 (10th Cir. 1983)).

However, in. this case, it is not recommended that the case be dismissed without prejudice against CSU due to plaintiff's, failure to serve that defendant properly in a timely manner or that the plaintiff be given an opportunity to re-serve CSU. Rather, it is recommended that the case be dismissed against CSU, with prejudice, because CSU has shown that it is not a proper defendant. Instead, the proper defendant is the Colorado State Board of Agriculture ("SBA"). See Roberts v. Colorado State Bd. of Agriculture, 998 F.2d 824, 827 (10th Cir. 1993); Drake v.City and County of Denver, 953 F. Supp. 1150, 1156 n.3 (D.Colo. 1997) (Title VII claim) ("The SBA, as the entity that controls CSU, is the proper defendant to any suit against the university... The naming of CSU as a separate defendant in suit against SBA is improper and redundant."), aff'd, 161 F.3d 17 (10th Cir. 1998). The Tenth Circuit stated in Roberts:

In light of the statutory scheme creating SBA and CSU... CSU is powerless to comply with the district court's order on its own, and the relief plaintiffs seek may only be obtained against SBA. The Colorado legislature established CSU and SBA as separate entities, Colo.Rev.Stat. §§ 23-30-101, 23-31-101. While SBA was constituted as "a body corporate, capable in law of suing and being sued," *id.* § 23-30-102, the statutes and constitutional provisions pertaining to CSU contain no

similar grant. *See id.* §§ 23-31-101 to -136, Colo. Const. art. VIII, §5(l). Furthermore, although CSU maintains control over certain internal institutional policies..., SBA has general control and supervisory power including "power to adopt... regulations... to secure the successful operation of the university," *id.* § 23-31-108, hiring authority, *id.* § 23-31-109, and complete financial control over CSU, *id.* § 23-31-120; Colo. Const. art. VIII, §5(2); *see also Lewis v. State Bd. of Agriculture*, 138 Colo. 540, 335 P.2d 546, 550 (1959). Under this scheme, even if CSU were capable of being sued, any adverse verdict or remedial order entered against CSU concerning hiring or funding would have to operate against SBA...

Roberts, 998 F.2d at 827.

Finally, the court finds that plaintiff's request that CSU or the State of Colorado be fined $2000 and that some purported false statement be submitted to the U.S. Attorneys Office be denied as baseless.

Defendant Adecco's Motion to Dismiss.

Defendant Adecco Colorado ("Adecco") moves to dismiss the Complaint on the following grounds. First, plaintiff did not name Adecco in his Charge Discrimination ("Charge") filed with the United States Equal Employment Opportunity Commission ("EEOC"). Therefore., plaintiff failed to exhaust the administrative requirements that serve as jurisdictional prerequisites to filing suit under Title VII. Second, on the face of the Complaint, plaintiff failed to file his EEOC Charge within 300 days of the allegedly discriminatory conduct by Adecco, making his Charge untimely and precluding relief as a matter of law pursuant to

42 U.S.C. § 20OOe-5(e)(1). Third, plaintiff failed to serve Adecco within the 120 days required under Fed. R. Civ. P. 4(m). Fourth, plaintiff attempted to serve Adecco via registered mail, a method of service specifically rejected by the State of Colorado under Colo. R. Civ. P. 4. This court agrees with all of defendant Adecco's arguments for dismissal.

Failure to Include Adecco in the EEQQ Charge. Addeco asserts that the plaintiff did not name Adecco as a Charged Party, nor did he include Adecco in the particulars of the Charge against CSU. In support of this argument is a letter, Adecco's attorney received from the EEOC denying Adecco's request, which was made pursuant to the Freedom of Information Act, for a copy of the plaintiff's EEOC Charge file because Adecco "is neither the Charging Party nor the Respondent." (Defs.' Supp. to Mot.). Adecco asserts that it had no notice of the Charge before the plaintiff filed this lawsuit and that it had no opportunity to participate in conciliation or to correct any alleged violation. Consequently, Adecco asserts that there was no exhaustion of administrative remedies with respect to Adecco as required under Tenth Circuit law, and the action must be dismissed with prejudice pursuant to Fed. R. Civ. P. 12(b)(6).

In response, plaintiff does not deny that Adecco was not named as a Charged Party or mentioned in the particulars of the Charge. Rather, plaintiff in essence contends that this failure should be excused because he listed Adecco in a form he allegedly filed with the EEOC on December 4, 2000, which from a full reading of plaintiff's Response, the Complaint (¶ 2), and attachments thereto (letter attached to complaint dated 03/02/01) appears to have been his December 4, 2000, "intake questionnaire." Plaintiff did not provide the court with a complete copy of this purported

document. Rather, attached to his response is just page number 3 on which the following question and answers are stated:

> 10. If a different organization is involved in the matter you believe was discriminatory, identify by:
>
> EMPLOYER [ ] UNION [ ] EMPLOYMENT AGENCY [x]
>
> NAME: Adecco (Employment with Celestica)
>
> ADDRESS,. 122 East Monroe
>
> CITY, STATE, ZIP: Fort Collins, Colorado 80525
> COUNTY: Larimer
>
> TELEPHONE NO.: (include Area Code) (970) 204-4801
>
> NUMBER OF EMPLOYEES/MEMBERS: ?
>
> TYPE OF BUSINESS: Temporary Agency/ Celestica (P.C.Boards)

The court finds that plaintiff's inclusion of Adecco merely on what appears to have been his intake questionnaire is inadequate to confer subject matter jurisdiction over plaintiff's claim against Adecco. See Williams v. Prison Health 1301, 1312 (D. Kan. 2001) ([T]he court is not persuaded that plaintiff's…intake form is sufficient to qualify as a proper charge."; Ball v. City of Cheyenne, Wyo., 845 F. Supp. 803, 813 (D. Wyo. 1993) (Plaintiff merely named individual defendant in his intake questionnaire. Court found that the failure to name that defendant in the formal charge

deprived him of notice that he was a target of the EEOC investigation and of the opportunity to participate in conciliation efforts.), aff'd in part and rev'd in part, 54 F.3d 664 (10th Cir. 1995).

"As a general rule, a plaintiff must file a charge against a party with the EEOC before [he] can sue that party under Title VII." Knowlton v. Teltrust Phones, Inc., 189 F.3d 1177, 1185 (10th Cir. 1999).
See Rubidoux v. Johnston, 954 F. Supp. 1477, 1480 (D. Colo. 1997) ("Generally, a court has no jurisdiction over Title VII claims against a party not named as a respondent in an EEOC charge."). However, "a Title VII action may proceed against a defendant not named in the EEOC charge when 'there is a clear identity of interest between the unnamed defendant and the party named in the administrative charge.'" Knowlton, 189 F.3d at 1185 (quoting Johnson v. Palma, 931 F.2d 203, 209 (2nd Cir. 1991)). This exception satisfies the dual purposes for the requirement of filing a charge with the EEOC, id., which are "to provide notice of the alleged violation to the charged party, and to provide the [EEOC] with the opportunity to conciliate the claim." Seymore v. Shawver & Sons, Inc., 111 F.3d 794, 799 (10th Cir. 1997). Four
factors are typically considered to determine whether dismissal is mandated if a party's name was omitted from the EEOC Charge. These factors are:

> 1) whether the role of the unnamed party could through reasonable effort by the complainant be ascertained at the time of the filing of the EEOC complaint; 2) whether, under the circumstances, the interests of a named [party] are so similar as the unnamed party's that for the purpose of obtaining voluntary conciliation and compliance it would be

unnecessary to include the unnamed party in the EEOC proceedings; 3)whether its absence from the EEOC proceedings resulted in actual prejudice to the interests of the unnamed party; 4) whether the unnamed party has in some way represented to the complainant that its relationship with the complainant is to be through the named party.

Romero v. Union Pac. R.R., 615 F.2d 1303, 1312 (1 01h Cir. 1 980).

The court agrees with Adecco that the Romero factors mandate dismissal. First, Adecco is a temporary agency, which employed the plaintiff only briefly. Plaintiff certainly knew of Adecco's role in hiring him and assigning him to work at Celestica briefly. In addition, plaintiff himself alleges he named Adecco in a form submitted to the EEOC, which demonstrates his knowledge of Adecco's alleged role in the alleged discrimination. Second, notwithstanding plaintiff's outlandish, odd attempt to link the two defendants, Adecco and CSU share no common interests, they have no relationship to each other, and they will not present a joint defense. Third, Adecco presumably has suffered actual prejudice from being deprived of the opportunity to participate in conciliation and from being deprived of notice of the Charge. Fourth and finally, Adecco never represented to the plaintiff that its relationship was to be through CSU, the named party. Plaintiff could not have reasonably believed that a Charge against CSU would provide actual or constructive notice to Adecco. In sum, the court finds that the claims against Adecco should be dismissed based upon the plaintiff's failure to name Adecco in his EEOC Charge.

EEOC Charge was Untimely. "A plaintiff is required to file a timely charge of discrimination with the [EEOC] prior

to filing a civil action under Title VII." Seymore v. Shawver & Sons, Inc., 111 F.3d 794, 799 (10th Cir. 1997) (citing 42 U.S.C. §20OOe-5(e) and (f)(1)). "The court has no jurisdiction over a Title VII claim unless the plaintiff filed charges of discrimination with the EEOC within 300 days of the discriminatory practice." Rubindoux v. Johnston, 954 F. Supp. 1477, 1481 (D. Colo. 1997). See Romero, 615 F.2d at 1311 ("The.filing of a timely charge of discrimination with the EEOC is a Jurisdictional prerequisite to the institution of a lawsuit.").

Adecco asserts that the plaintiff's Complaint alleges that the last, and
perhaps only, instance of alleged discrimination against plaintiff by Adecco occurred when he was dismissed from his employment on January 29, 2000. (Compl. ¶23). Therefore; Adecco asserts that the statutory 300-day period for filing a charge of discrimination expired on November 24, 2000, yet according to the Complaint, plaintiff did not file his Charge until February 6, 2001. Although the plaintiff purportedly filed his intake questionnaire on December 4, 2000, thereby beginning the Charge process, even if such a questionnaire was sufficient to toll the 300-day limitations

period,[2] the questionnaire itself was untimely under 42 U.S.C. § 2000e-5(e)(1). In fact, the EEOC dismissed the plaintiff's Charge as untimely on February 16, 2001. (Dismissal and Notice of Rights attached to Compl.).

In his Response to Adecco's motion, while not a model of clarity, plaintiff

appears to argue that his Charge was timely filed within 300 days of the April 18, 2000, denial of his appeal for reinstatement by CSU, and that even if his administrative charge was not timely filed, it should be deemed timely under a continuing violations theory. See Rubidoux v. Johnston, 954 F. Supp. at 1481 n.1 ("if a timely charge is filed with respect to an act of discrimination that is part of a continuing course of conduct, the court also has jurisdiction to hear claims based on the acts comprising the course of conduct for which the filing was not timely.") (citing Martin v. Nannie & the Newborns, Inc., 3 F.3d 1410, 1414 (10th Cir. 1993)). The court finds no merit to plaintiff's arguments. The only allegation in the Complaint regarding Adecco asserts that the plaintiff -wag dismissed from Adecco on January 29, 2000. Based upon this date, the plaintiff's claim is untimely, whether determined by the date the Charge was filed or the date the intake questionnaire was submitted.

---

[2]In unreported opinions, the Tenth Circuit has noted that "[c]ourts are split on whether such an informal questionnaire can be deemed a timely fifing when it is later verified by a formal charge." E.g., Barzanji v. Sealy Mattress Mfq. Co., 2001 WL 273237 (10th Cir. Mar. 20, 2001); Welsh v. City of Shawnee, 1999 WL 345597 (10th Cir. June 1, 1999). The Tenth Circuit, however, has not yet had to decide this issue. See Barzanji, 2001 WL 273237, *2.

Plaintiff has made no showing that any of the alleged actions constituting the purported "continuing violation" had anything to do with Adecco. As,correctly asserted by Adecco in its Reply, plaintiff's allegations involve two separate terminations, by two separate employers, decided by separate supervisors, and are unrelated in any way. Plaintiff's conclusory, far-fetched allegations of some sort of conspiracy between the two unrelated defendants and his odd, nonsensical numerical, alphabetic, and other associations (see, e.g., Pl.'s Am. to Reply at P2) are simply insufficient to implicate the continuing course of conduct theory.

In sum, this court agrees that even if the plaintiff is found to have properly named Adecco in the Charge, the Charge was untimely, and, therefore, the Complaint should be dismissed with prejudice as against Adecco.

Untimely and Improper Service. The court further agrees with Adecco, that the Complaint was untimely and improperly served on Adecco.

> Rule 4(h) of the Federal Rules of Civil Procedures provides in relevant part:
>
> Unless otherwise provided by federal law, service upon a domestic corporation... and from which a waiver of service has not been obtained and filed, shall be effected:
>
> (1) in a judicial district of the United States in the manner prescribed for individuals by subdivision (e)(1), or by delivering a copy of the summons and of the complaint to an

> officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant ....

Fed. R. Civ. P. 4(h). The subsection referred to above, Rule 4(e)(1), provides:

> pursuant to the law of the state in which the district court is located, or in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the State;

Fed. R. Civ. P. 4(e)(1). Furthermore, Rule 4(e) of the Colorado Rules of Civil

Procedure mandates personal service on a corporation "by delivering a copy [of the Summons and Complaint] to any officer, manager, general agent, or registered agent." Colo. R. Civ. P. 4(e)(5). Colorado rules do not allow for service by mail or publication except "in actions affecting specific property or status or other proceedings in rem," Colo. R. Civ. P. 4(g), which is not the case here. In this case, however, the plaintiff did not comply with these service rules.

Adecco, did not waive service pursuant to Fed. R. Civ. P. 4(d), and, therefore, Rule 4(h) comes into play. Nevertheless, in his "Proof of Service" (Docket No. 14), the plaintiff merely states that he mailed a copy of the summons and the Complaint to Adecco on September 20, 2001, and defendant's representative signed for the certified mail on

September 24, 2001. In addition, while plaintiff claims he asked a friend to deliver a copy of the summons and the Complaint to Adecco on October 15, 2001, plaintiff states that Adecco refused to accept them. (Docket No. 14 at P3). Furthermore, plaintiff later indicates in his Response to Adecco's motion to dismiss that this friend would have merely served the summons, not the Complaint. Plaintiff's Response provides no additional information that would establish that
proper service has been made upon Adecco. For example, plaintiff appears to argue that service by mail on a corporation is proper under rule 4(d), but that is the waiver provision, and Adecco did not waive service. Plaintiff further incorrectly claims that once service is attempted under Fed. R. Civ. P. 4(d), service of process in accordance with state law is not permissible. In sum, the court finds that the plaintiff has not shown that he has properly served Adecco.

Finally, Adecco is correct in its assertion that the plaintiff has not effectuated service in a timely manner pursuant to Fed. R. Civ. P. 4(m). As noted above with respect to co-defendant CSU, this court granted the plaintiff an extension to October 15, 2001, to complete service (Docket No. 14), but to date he still has not done so and has not shown good cause for the failure.

**WHEREFORE**, for the foregoing reasons, it is hereby

**ORDERED** that Defendant CSU's Motion for Leave to File Reply, which was filed on November 20, 2001 (Docket No. 24), is, granted, and the Reply is accepted for filing. It is further

**RECOMMENDED** that the Defendant CSU's Motion to Dismiss, which was filed on November 1, 2001 (Docket No.

18), be granted and the Complaint be dismissed with prejudice as against defendant CSU, It is further

**RECOMMENDED** that the Plaintiff's Motion to Deny Dismissal of Title VII Case Against Colorado State. University,. which was filed on November 13, 2001 (Docket No. 21 as Amended by Docket No. 23), be denied. It is further

**RECOMMENDED** that Defendant Adecco's 12(b)(5) Motion to Dismiss for Insufficiency of Process, or in the Alternative, 12(b)(6) Motion to Dismiss with Prejudice, which was filed on November 21, 2001 (Docket No. 25), be granted and the Complaint be dismissed with prejudice as against defendant Adecco.

**NOTICE: Pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), the parties have ten (10) days after service to serve and file written, specific objections to the above recommendations with the District Judge** assigned to the case. The District Judge need not consider frivolous, conclusive, or general objections. A party's failure to file and serve such written specific objections **WILL PRECLUDE** the party from a *de novo* determination by the District Judge, United States v. Raddatz, 447 U.S. 667, 676-83 (1980), and also WILL PRECLUDE appellate review of both factual and legal questions, Talley v. Hesse, 91 F.3d 1411, 1412-13 (10th Cir. 1996).

Dated: January "s/23rd", 2002
Denver, Colorado

"s/Michael J. Watanabe"
Michael J. Watanabe
United States Magistrate Judge

Raymond Charles Persik
P.M.B 202, 2519 South Shields
Fort Collins, Colorado 80526
Electronic-Mail: rcpersik@yahoo.com

**U.S. Equal Employment Opportunity Commission**

Denver District Office
303 East 17th Avenue, Suite 510
Denver, Colorado 80203

March 2, 2001

Subject: Dismissal and Notice of Rights, from charge number 320A10464, dated February 16, 2001.

1. This letter concerns the dismissal of Charge Number 320A10464 filed on February 6, 2001 pertaining to the Intake Questionnaire filed with your office on December 4, 2000.

2. My initial meeting was scheduled for January 9, 2001 to discuss the two Intake Questionnaires that I submitted. I talked to Kathryn Hammig, on the telephone on Monday, January 5, 2001 to postpone this meeting due to being hit by a motor vehicle in Pennsylvania, while walking, on December 22, 2000. 1 had a fax prepared; however, she said it was not necessary, and she rescheduled the meeting. The 2d Intake Questionnaire, submitted on December 4, 2000, was discussed on February 6, 2001. This Intake Questionnaire represents the beginning of the alleged discrimination in Colorado.

3. On the front of the Intake Questionnaire, it discusses to stop if the alleged discrimination took place over 300 days

ago. I was not certain of the date of the letter from Colorado State University that I alleged represented one of the final two direct discrimination events by the University. The charge filed on February 6, 2001, was filed 301 days from April 12, 2000; however, the letter from Colorado State University was dated April 18, 2000; therefore, if the 300 day regulation can be used, only 295 days had passed on February 6, 2001. Additionally, there was an appeal sent to the same University office in May 2000. I have attached a copy of the April 18, 2000 letter. Additionally, the only conflicts that I had at Colorado State University resulted over alleged harassment and discrimination,

4. Additionally, I addressed, in the December 4, 2000 Intake Questionnaire, the alleged harassment and discrimination that took place in January 2000 at Celestica in Fort Collins, Colorado. It is my belief that it is even potentially easier to prove this harassment was over my religious, pro-life beliefs. This alleged harassment occurred two days following a Fort Collins Police Officer telling me that harassment gets worse when you are ready to get off of the street. Additionally, one of the men working at the Celestica was a friend with a person that I alleged lied at CSU. Additionally, the officer asked me if I drove a Grey Chevy Blazer, which was the same, vehicle driven by the woman previously mentioned. I was reporting being choked by two men on January 27, 2000 to the Fort Collins Police Officer.

5. In some literature, that I recently read, it states that it is the Federal Equal Opportunity Commission's responsibility to stop discrimination and harassment in the workplace when it is occurring. In the state of Washington, I went into the Federal Equal Opportunity Office to verbally discuss a laboratory temporary agency making an interview difficult to obtain. She commented that it was probably not related to

the single women who began the alleged harassment in Fort Collins in 1997. The woman stated "it is probably something that occurred before that". Again, in 1997, I divorced my x-wife as a direct result of a 1994 abortion.

6. It is my sincere hope that this charge is re-ove cd with the original filing date of February 6, 2000. The people that started this harassment must learn to respect other people. As is mentioned, in Dr. Denke's
April 18, 2000 letter, I truly support all people taking complete responsibility for their actions. I have been continuously humiliated, lied to and allegedly assaulted five times for saying "Happy New Year" and sending a "Love Letter" to a young woman.

Sincerely,

"s/Raymond Charles Persik"-

**U.S. Equal Employment Opportunity Commission**

DISMISSAL AND NOTICE OF RIGHTS

To: Raymond Persik
P.M.B. 202. 2519 S. Shields Street
Fort Collins, CO 80526

From: Equal Employment Opportunity Commission
Denver District Office
303 East 17th Avenue
Denver, Colorado 80203

On behalf of a person aggrieved whose identity is CONFIDENTIAL (29 CFR § 1601.7(a))

Charge No. 320 A1 0464

EEOC Representative
Holly Romero, Enforcement Supervisor

Telephone No.
(303) 866-1348

(See the additional information attached to this form.)

YOUR CHARGE IS DISMISSED FOR THE FOLLOWING REASON:

[...material not copied...]

[X] Your charge was not timely filed with the Commission, i.e., you waited too long after the date(s) of the discrimination you alleged to file your charge. Because it was filed outside the time limit prescribed by law, the Commission cannot investigate your allegations.

[...material not copied...]

NOTICE OF SUIT RIGHTS

[X] Title VII and/or the American with Disabilities Act: This is your NOTICE OF RIGHT TO SUE, which terminates the Commission's processing of your charge. If you want to pursue your charge further, you have the right to sue the respondent(s) named in your charge in U.S. District Court. If you decide to sue, you must sue WITHIN 90 DAYS from your receipt of this Notice; otherwise your right to sue is lost.

[...material not copied...]

On behalf of the Commission
"s/2/16/01" Francisco J. Flores Jr., District Director "s/by Elizabeth Fra???"

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY [x] EEOC

CHARGE NUMBER "s/320A10464"

Colorado Civil Rights Division and EEOC
State or local Agency, if any

FEB 6 2001

NAME Mr. Raymond Persik
HOME TELEPHONE (970) 532-3785
STREET ADDRESS P.M.B. 202, 2519 South Shields St., Fort Collins, CO 80526

DATE OF BIRTH 07/20/1965

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE,
STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME Colorado State University

NUMBER OF EMPLOYEES, MEMBERS
Cat C (201-500)

Telephone (970) 491-5312
STREET ADDRESS
201 Administration Building, Fort Collins. CO 80523-8004

COUNTY 069

[Information not included]

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

[ ] RACE [ ] COLOR [x] SEX
[x] RELIGION [ ] NATIONAL ORIGIN
[ ] AGE [ ] DISABILITY [ ] OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE
EARLIEST 04/12/2000
LATEST 04/12/2000
[ ] CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)),.

I. I was subjected to different terms and conditions of employment and on April 12, 2000, I was denied reinstatement to my position of Teaching Assistant.

II. The reason for denial of reinstatement was based on contact with a female student.

III. I believe I was discriminated against because of my sex, male, and my religion, Lutheran, in violation of Title VII of the Civil Rights Act of 1964, as amended.
a . Female students lied about me to University officials.

b. University police lied about me on paper.

c. The University Equal Opportunity Office failed to - investigate my
complaint.

d. The University Vice-President for Student Affairs representative failed to investigative my complaint.

I want this charge filed with both the EEOC; and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY (when necessary for State and Local Requirements) "s/Kathryn Hammig" I swear or affirm that I. have read the above charge and it is true to the best. of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing Is true correct.
Date "s/February 6, 2001"
Charging Party (Signature)

SIGNATURE OF COMPLAINANT "s/Raymond Persik"
SUBSCRIBED AND,SWORN BEF0RE ME THIS DATE
(Month, day and year)
KATHRYN HAMMIG
NOTARY REPUBLIC
STATE OF COLORADO
My Commission Expires 1/12/2002

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

Denver District Office
303 East 17th Avenue, Suite 510
Denver, CO 80203
PH: (303) 866-1300/1301
TTY (303) 866-1950
FAX (303) 866-1085
1-800-669-4000

RECEIVED
DEC 04 2000
EEOC DENVER
DISTRICT OFFICE

1-800-669-4000

Date November 26, 2000

INTAKE QUESTIONNAIRE

FOR POTENTIAL CHARGING PARTY (PCP)

COMPLETING THIS QUESTIONNAIRE DOES NOT CONSTITUTE THE FILING OF A CHARGE.

The EEOC enforces laws which prohibit discrimination on the basis of Race, Color, National Origin, Sex, Religion, Age, and Disability. Ask the Information Specialist at the Front Reception Desk for a separate questionnaire if your complaint is regarding a disability.

IF YOU HAVE ALREADY FILED WITH A STATE AGENCY (EXAMPLE: COLORADO CIVIL RIGHTS DIVISION), OR IF YOU ARE COMPLAINING ABOUT SOMETHING WHICH HAPPENED TO YOU OVER 300 DAYS AGO, STOP AND ASK TO SPEAK TO AN INVESTIGATOR BEFORE PROCEEDING FURTHER WITH THIS QUESTIONNAIRE.

(PLEASE PRINT)

1. NAME RAYMOND CHARLES PERSIK
   ADDRESS P.M.B. 202; 2519 South Shields Street
   CITY FORT COLLINS STATE CO
   ZIP CODE 80526 COUNTY LARIMER
   TELEPHONE NO. WORK (303) 499-9288 HOME ( )
   I prefer to be contacted at: [x] Work [ ] Home
   Days:____ Time: message during normal business hours 8a.m. – 5 p.m.
   YOUR SOCIAL SECURITY NUMBER: 211-56-2242
   YOUR SEX [x] Male [ ] Female
   YOUR DATE OF BIRTH: July 20, 1965 YOUR AGE: 35
   YOUR RACE: [x] White [ ] Black etc…
   YOUR NATIONAL ORIGIN … [ ] American (USA) US Citizen

Please provide (Remainder of page deleted)

**Colorado State University**

April 18, 2000

Raymond C. Persik
PMB 202, 2519 S. Shields Street
Fort Collins, CO 80526

Office of the Vice President for Student Affairs
201 Administration Building
Fort Collins, Colorado 80523-8004
(970) 491-5312
Fax: (970) 491-7025

Dear Mr. Persik:

This letter is sent to advise you of the decision of the Admissions Review Panel after the hearing -held for you on Thursday, March 23, 2000 at 2:00 p.m. Prior to the hearing, you were asked to provide the Panel with information regarding your present and prior conduct, your willingness to comply with legal requirements, and relevant medical information. The Panel deemed this information necessary to assess your desire and ability to behave in a manner consistent with the rights and responsibilities applicable to all students of the University. These standards, set forth in the University General "maintain standards of personal integrity that are in harmony with the educational goals of the institution; to observe national, state and local laws, and University regulations; and to respect the rights, privileges, and property of other people."

At the hearing, you were given the opportunity to discuss your criminal conviction, any court ordered supervision, the results of psychological evaluations or treatment requirements, and your current life situation with the Admissions Review Panel.

We also specifically discussed the behavior associated with your criminal record, your past disciplinary record and relationship with the University, and your pattern of engaging in inappropriate behavior.

The Panel has found that the evidence shows you engaged in the following prohibited behavior as listed in the "Student Rights and Responsibilities:

> #4. Abusive conduct with threatens or endangers the physical or psychological health, safety, or welfare of an individual or a group of individuals; harassment of any member of the University community including harassment on the basis of race, sexual orientation, age, gender, religion, physical disability.
>
> #6. Failure to comply with the verbal or written directions of any University officials acting in the performance of their duties and in the scope of their employment, or resisting police officers while acting in the performance of their duties.
>
> #11. Violation of any federal or state law or local ordinance including but not limited to those covering alcoholic beverages, narcotics and illegal drugs, gambling, arson, sex offenses, assaults, harassment, violation of civil rights, disorderly conduct, or lewd, indecent, or obscene conduct or expression.

The information provided to us also shows the following pattern of behavior:

-You pleaded guilty to violating the court ordered no contact with a CSU student.
-You pleaded guilty to violating the condition of a bond that you posted
-You served about 45 days in jail on those guilty pleas

After review of all relevant information, the Panel has found that you have a long history and continued manifestations of a hostile and non-cooperative attitude. Your attitude is evidenced by the information in your student disciplinary file and the matters discussed at the hearing, which show your failure to disclose requested medical information to the panel and several unreasonable conflicts with personnel in various sectors of the University. Furthermore, during the review hearing, the Panel found that you blamed all your problems on the police and others, and did not take responsibility for your actions, which is not consistent with the University's expectations of its students.

Based upon the evidence described above, which was reviewed and discussed with you in the hearing, the Panel has concluded that your presence at this institution is likely to endanger the welfare or property of members of its academic community and the effective performance of the University's functions. Therefore, the Panel decided to recommend to the Admissions Office that your application for admission to the University for the 2000 fall term be denied.

If you wish to appeal this decision, you must do so by contacting the Office of the Provost/Academic Vice President

in writing within two weeks of the date of this letter. The decision of this office will be final.
Sincerely,

Mark S. Denke
Assistant Vice President for Student Affairs

xc: Mary Ontiveros, Admissions
Laurence Pendelton, Associate General Counsel
Loren Crabtree, Provost
File

Colorado
State
University

Office of the Vice President
for Student Affairs
201 Administration Building
Fort Collins, Colorado 80523-8004
(970) 491-5312
Fax: (970) 491-7025

March 3, 2000

Raymond Persik
I.D.#211-56-2242
PMB 202; 2519 S. Shields Street
Fort Collins, CO 80526

Dear Mr. Persik:

This letter is sent to confirm that a readmission hearing will take place on Thursday, March 23, 2000, from 2:00 to 4:00 p.m. A representative from each of the following offices will be present: the Office of Judicial Affairs, the Graduate School, the Office of Admissions, the University Counseling Center, Hartshorn Health Services, and Colorado State University Police.

We would like you to appear at the hearing or talk with us via conference phone. Please notify me of your intentions as quickly as possible.

Please feel free to call me if you have any questions.

I look forward to hearing from you.

Sincerely,

"s/Mark S. Denke"
Mark S. Denke
Assistant Vice President for Student Affairs

AGH/kl

xc:
File

Colorado
State
University

March 1, 1999

Office of the Vice President
for Student Affairs

201 Administration Building
Fort Collins, Colorado 80523-8004
(970) 491-5312
FAX: (970) 491-7025

Raymond Persik
I.D. #211-56-2242
730 Opossum Lake Rd.
Carlisle, PA 17013

Dear Raymond:

This letter is written to summarize the conversation I had with you and your mother on February 1, 1999.

I sent you a letter of notice dated January 14, 1999 informing you that I had received notification that you had contacted Mollie Schreibman by telephone at approximatelv 2:00 a.m on Januarv 2, 1999. You were charged with:

> #4. Abusive conduct which threatens or endangers the physical or psychological health, safety or welfare of another individual; harassment on the basis of gender.
> #6. Failure to comply with the verbal and written directions given to you based on prior disciplinary action

that you were to have DO contact in any form with Mollie Schreibman.

In our meeting, you and your mother informed me that you had experienced sortie significant emotional/psychological difficulties over the semester break and that you had spent some time in a hospital. You apparently had returned to Fort Collins to arrange for a medical leave of absence from your studies and to gather some of your belongings before returning home to receive additional medical and psychological treatment.

You told me that you did make the phone call to Mollie and that you knew that you were not supposed to do that. You described yourself as physically and emotionally exhausted and that you just broke down and called her. You said it was a simple conversation which was not intended to frighten Mollie or harass her.

I told you that regardless of your intentions, your phone call did frighten and harass Mollie and that there is no contact you could have with her that would not. You told me that you understand that you violated the agreement.

I told you that Lt. Swenson from the CSU police informed me that three additional women approached him to make a complaint about your behavior. While I do not yet have the details of these reports, these issues will require resolution upon your return.

Based on our conversation, I agreed that it would be appropriate to have you return home on a medical leave of absence and to deal with the disciplinary boundaries at the point you wish to return to the university. I am interested in your recovery and in maximizing your chances for success at

CSU both academically and personally. I must, however, balance your interests with those of other students and the university in general. I must be completely satisfied that you have sufficiently dealt with the medical and psychological issues you are facing so that you no longer represent a risk to the safety of others or to the orderly functioning of the university.

I have placed a hold on your registration status and have informed your department regarding our agreement.

In order to return to Colorado State University on a probationary status:

1. You must seek ongoing medical and psychological treatment. I must be informed by your primary physician and psychologist of the nature of your diagnosis, your treatment plan, and whether you have sufficiently progressed in your treatment to no longer represent a risk for recurrent behavioral difficulties on campus.

2. Based on the information we receive from your primary therapists, we will coordinate the appropriate ongoing monitoring and care from the University Health Center and Counseling Center. You will be required to fully participate in any ongoing treatment recommended by your primary physician in consultation with the University Staff Psychiatrist and Director of the Counseling Center.

3. Based on the progress you have made and the recommendations of your treatment providers, we will need to facilitate conversation with the coordinating staff in the Chemistry Department regarding the appropriateness of you resuming graduate teaching

assistantships or tutoring responsibilities for the department. It is my understanding from Lt. Swenson that the additional behavioral complaints were generally related to you not maintaining appropriate interpersonal boundaries in tutoring sessions with individual students.

4. You must have NO CONTACT with Mollie Schreibman. This includes contact in person, by telephone, in writing, by e-mail, through a third party or in any other way. Any failure to completely abide by this requirement will result in expulsion from the university with no opportunity to return to this institution.

5. You must remain free of any pending criminal charges or convictions at the time you are seeking to return to Colorado State University.

6. You must notify the Director of Judicial Affairs at least four weeks in advance of your intended return to Colorado State University so that we may begin the verification and consultation process.

7. If you meet all conditions listed above, you may return to Colorado State University under the terms of Disciplinary Probation.

Disciplinary Probation is defined in the Student Rights and Responsibilities Handbook as:

As a result of several minor infractions or a more serious major infraction, a student may be placed on disciplinary probation. A time period of probation is established in which the student is required to show appropriate changes in attitude and behavior. Specific sanctions or restrictions may be imposed as part of this discipline. A

student on disciplinary probation is not in good standing with the University. Good standing shall include but not be limited to a requirement for eligibility to be appointed as a student representative, to serve on a University committee, to participate in intercollegiate athletics, and for recognition by the University of any office held in a student organization. A violation of the terms of disciplinary probation, or subsequent misconduct, is grounds for further disciplinary action, including suspension, dismissal, or expulsion.

Raymond, while I am truly sorry that your situation reached a crisis for you, I am also hopeful that this will be your opportunity to more fully understand your situation and give you more resources and options that will support your success. I am hopeful that you will be able to return to Colorado State University.

If you have any questions regarding this letter please feel free to contact me.

Sincerely,

"s/Anne G. Hudgens"
Anne G. Hudgens, Director
Judicial Affairs

xc: Dr. Rennick, Health Center-Staff psychiatrist
Dr. Davidshofer, Director, Counseling Center
Dr. Anderson, Chemistry
Lt. Swenson, CSUPD
Mrs. Persik
Discipline file

Colorado
State
University

December 22, 1997

Office of the Vice President
for Student Affairs
201 Administration Building
Fort Collins, Colorado 80523-8004
(970) 491-5312
FAX: (970) 491-7025

Raymond Persik
I.D. #211-56-2242
PO Box 271811
Fort Collins, CO 80521

Dear Mr. Persik:

This letter is written to notify you of the results of the Administrative Discipline Hearing held for you on Wednesday, December 3, and Friday, December 19, 1997, in 201 Administration Building.

During the hearing you were charged with failure to comply with the direct request of a University Official acting in the performance of her duties. This charge stemmed from an allegation that you had failed to comply with an agreement that you would have NO CONTACT with Mollie Schreibman, which was negotiated by Rosalyn Cutler,

Conciliation Officer in the Office of Equal Opportunity. Mollie Schreibman reported that you violated this agreement on two occasions, October 31, 1997 and November 10, 1997.

In the hearing we discussed the report and your perceptions of the incidents. You told me that you do not dispute that you made contact with Mollie Schreibman on these two dates. You further explained that you believe that there are extenuating circumstances to this situation in that you feel that Mollie and Kate Schreibman have engaged in an ongoing harassment of you, and have interfered with your ability to function effectively as a graduate teaching assistant in Chemistry.

On December 3, 1997, I spent nearly four hours with you, hearing the nature of your relationship and pain related to Mollie Schreibman; the difficulties you have experienced in terms of unplanned encounters with Mollie and her identical twin, Kate, and I heard testimony from six witnesses indicating they had either witnessed encounters (no verbal interactions with you) or had witnessed your ongoing struggles in dealing with these encounters.

You also told me that you wanted to exercise your right to have adverse witnesses questioned. I let you know that I felt that I would be able to accomplish more by talking to Mollie and Kate separately in terms of understanding what might be occurring for them in relationship to the behaviors you were experiencing as troubling and interfering with your life and to be able to negotiate binding agreements. You let me know that it was important to you to be able to face them, ask questions, and to try and bring closure to this. I let you know that I would schedule an additional time in which your right to have adverse witnesses questioned could be exercised.

I also asked you for permission to discuss this situation with your counselor, Carol Freemole. You provided her with a release. The request to consult with Carol related to my deep desire to work toward a resolution in this situation that would best compliment the work you were doing in therapy and to provide institutional protections to all involved.

Prior to my first discussion with Carol, I found myself increasingly uncomfortable with structuring a face to face interaction between you, Mollie, and Kate. My discomfort related to my perception that your desire to meet with Mollie in person represented a perpetuation of your desire for contact and would serve as little more than a sanctioned opportunity for you to continue seeking contact and resolution with Mollie rather that accepting the boundaries she has stated. I discussed my discomfort with Carol Freemole. She agreed that it would not be in your best interest to have that meeting. You told me in that phone conversation that it was important for you to meet Mollie because you "just want to find out from her why you can't be reasonable adults". I told you that the calling of adverse witnesses is intended to provide clarification regarding factually disputed testimony, and that there is no dispute regarding you not keeping the NO CONTACT agreement. I told you I would not allow the kind of questioning you told me you were seeking, and that I would meet with Mollie and Kate to make clear agreements with them regarding not perpetuating any difficulties. You reluctantly agreed to not pursue the meeting during our morning conversation on 12/10/97.

I received a phone message from you during the afternoon of Wednesday, December 10 indicating that you had changed your mind and that it was really, really important to you to meet with Mollie and Kate in order to bring closure to the

situation. I returned your call and let you know that I very reluctantly agreed to schedule an opportunity for you to have adverse witnesses called in order to comply with the due process afforded to students. I also let you know that I would do this in the form of a conference call and that you needed to provide me with a list of questions you wanted asked of each witness at least 48 hours in advance of scheduled call. I told you that I would be asking the questions that I believed appropriate to determining facts in this case and that all questioning would come through me. I asked you about your schedule and you gave me times that you would be available. You told me that you were available anytime after Tuesday, December 16, 1997. I asked you to provide me the questions by Monday, December
15,1997.

I met Mollie and Kate Schreibman on Monday, December 15, 1997 and they agreed to participate in the questioning, and I scheduled it for Friday, December 19, 1997 at 2:00pm. I called you to inform you of the time and date of the conference call. You asked for an extension for submitting the written questions until Wednesday, December 17, 1997. I agreed. You also registered your concern that they would be at their home for the call because of the opportunity to have others present without our knowing it. I let you know that I would ask them not to have others present and that we would talk with them one at a time. You told me that you still wanted a face to face meeting scheduled. I told you I would not do that. You told me to expect a call from your attorney.

On Wednesday, December 17, 1997, I received a call from an attorney who indicated that you asked him to render an opinion regarding the Student Rights and Responsibilities procedures. He told me that he believed our policy called for you to be able to have a face to face meeting with adverse

witnesses. I told him that I had a very good reason for not wanting to schedule this meeting and that the General Counsel of the university does not believe it is required. I told him I would be proceeding with the conference call as planned.

On Friday, December 19, 1997 you appeared at 2:00pm which was the time we had scheduled for the conference call. I told you that I would not conduct the conference call without having the questions in advance, and that I was not willing to reschedule this call.

As a result of your disciplinary hearing, you have been placed on General Discipline until the date of Mollie Schreibman's graduation from CSU which she indicates would be May of 1999. General Discipline is defined in "Student Rights and Responsibilities" as:

As a result of several minor infractions or a more serious infraction, a student may be placed on general discipline. A time period is established during which the student is required to show appropriate changes in attitude and behavior. Specific sanctions or restrictions may be imposed as a part of this discipline, but do not result in loss of good standing with the University. Specific conditions may include psychiatric examination and special counseling such as alcohol and drug counseling. A violation of the terms of General Discipline, or subsequent misconduct after discipline, is grounds for further disciplinary action, including disciplinary probation, suspension, dismissal, or expulsion.

This decision is based upon your responsibility for having violated the no contact agreement with Mollie Schreibman on two occasions.

In addition, as a condition of your probation, you must complete the following requirements:

1. You are to have NO CONTACT with Mollie or Kate Schreibman. This includes contact in person; in writing; by telephone; by e-mail; through a third party; by placing yourself in their proximity; or in any other way.

2. Mollie and Kate Schreibman have agreed that they will not be in the Chemistry Building at all during the Spring semester of 1998. If either one needs to take a chemistry class or use the chemistry building in the future, a renegotiation of this agreement will need to occur to allow appropriate use of the facility. You may make a complaint to the CSU police or to my office if this agreement is not honored.

3. Outside of the Chemistry Building, it will be completely your responsibility to avoid contact (including eye contact) and remove yourself from any situation in which either one is already present. I remain skeptical that the number of chance encounters you report are actually by chance. I fully expect you to modify your patterns in such a way that these encounters very rarely if ever occur.

Failure to abide by these requirements will result in additional disciplinary action for failure to comply.

The specific expectation of you is that your future behavior will reflect appropriate consideration of University policy, and the rights and safety of others. If you wish to appeal this decision, you may do so by filing a written request with Dr. Don Crews, Discipline Pool Chairperson, Department of Forest Sciences, within seven days of your receipt of this

letter. Please refer to page 10 of the "Student Rights and Responsibilities" for a complete description of the appeal process.

If you are interested in gaining a better understanding of the University appeal procedure, you may wish to contact Mr. William King, University Ombudsman, 182 Lory Student Center, 491-7165.

If I can be of assistance to you, or if you have any questions concerning this decision, please do not hesitate to contact me.

Sincerely,

"s/Anne G. Hudgens"
Anne G. Hudgens
Director of Judicial Affairs

xc:
Carol Freemole, University Counseling Center
Rosalyn Cutler, Equal Opportunity
William King, Ombudsman
Capt. Chaffee, CSUPD
University Discipline File

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Colorado State University

Colorado State University

Conciliation Officer

101 Student Services
Fort Collins, Colorado 80523-1016
(970) 491-7548
FAX: (970) 491-2690

November 11, 1997

To: Anne Hudgens, Director
Office of Judicial Affairs

From: Roselyn Cutler, Conciliation Officer Office of Equal Opportunity
"s/Roselyn Cutler"
Subject: Request for Initiation of Discipline Process
Raymond Persik

Through this memorandum I am requesting that the discipline process be initiated with regard to the above-referenced graduate student, Raymond Persik.

On August 28, 1997, Sgt. Higney asked me to meet with Mollie Schreibman, an undergraduate student, and her father, Walter Schreibman. Sgt. Higney was concerned that Mr. Persik's behavior, as described to him by Ms. Schreibman, was a violation of the University's sexual harassment policy. Sgt. Higney's incident report is attached.

I met with Ms. Schreibman and her father. Following our meeting, Ms. Schreibman filed an informal complaint of discrimination alleging sexual harassment, a copy of which is attached. In the process of investigating the complaint, I met with Dr. Thomas Solie, Associate Chair of the Chemistry Department, and Dr. Nancy Boldt, Coordinator of the chemistry lab classes. In my discussions with Drs. Solie and Boldt, I learned that three separate concerns had been made by female students regarding Mr. Persik during spring semester 1997. It was agreed in a telephone conversation with Dr. Oren Anderson, Chair of the Chemistry Department, that I would investigate the three concerns and report my findings back to him while pursuing Ms. Schreibman's informal complaint in the manner outlined in the University's grievance procedure.

As you may already know, an informal complaint of discrimination is not adjudicated. Upon completion of the investigation and review of the evidence, a resolution satisfactory to all parties is negotiated. With regard to Ms. Schreibman's complaint of sexual harassment, it was agreed that Mr. Persik would have absolutely no contact with Ms. Schreibman.

I was able to meet with two of the three female students who had raised concerns about Mr. Persik and follow-up on the third with a classmate of the student involved. Subsequently, I met with Mr. Persik to discuss the allegations and provide him an opportunity to respond. Dr. Boldt attended this meeting. Frankly, I found Mr. Persik's response to be disturbing. Put bluntly, he didn't get it. I then met with Drs. Anderson, Solie and Boldt. As a result of this meeting and a meeting Dr. Anderson had with Mr. Persik, the attached letter was given to Mr. Persik.

Ms. Schreibman telephoned me yesterday, November 10, 1997, to inform me that Mr. Persik had contacted her twice in last two weeks. We met today so Ms. Schreibman could provide me with the details of the contacts. According to Ms. Schreibman, Mr. Persik stopped her on October 31st outside the Chemistry Building where she was talking with a classmate, Michelle Phillips. Mr. Persik allegedly told Ms. Schreibman that he was still in love with her and couldn't understand how she could have filed a complaint against him. Ms. Schreibman said that she repeatedly told Mr. Persik she did not wish to talk to him and tried walking away. Mr. Persik walked a little ways with her.

Over the next several days, Ms. Schreibman said she saw Mr. Persik everyday either at the Student Center or in the Chemistry Building. On November 10th Mr. Persik walked by Ms. Schreibman three times in approximately 15 minutes while she was speaking with an acquaintance outside Sweet Sinsations. Mr. Persik then tried to engage Ms. Schreibman in another conversation. According to Ms. Schreibman, he again told her how much he loves her, how much he gave up for her, and how much he desires a relationship with her. He also told her how good she looked when they spoke last week and on the previous Wednesday when he saw her. Ms. Schreibman says she told him twice that she did not wish to speak with him and that when she told him she had to go to class, he told her she didn't have class until 3:00pm.

I spoke with Dr. Boldt after talking with Ms. Schreibman. Mr. Persik told Dr. Boldt that he did have contact with Ms. Schreibman and according to Dr. Boldt it would appear that Mr. Persik sees nothing wrong with pursuing Ms. Schreibman given all the time he feels has gone by since she filed her complaint. Ms. Schreibman goes not agree. She strongly reiterated her desire to have no contact with Mr.

Persik. She also indicated that she may file a complaint with Sgt. Higney.

I informed Ms. Schreibman that I was greatly disturbed by the content of Mr. Persik's contact with her. I view it as a direct violation of the resolution agreed upon as a result of the informal complaint of sexual harassment as well as a violation of the standard of professional behavior Dr. Anderson required in his letter to Mr. Persik. Therefore, with Ms. Schreibman's consent, I am requesting that disciplinary proceedings be initiated with regard to Mr. Persik.

I remain available to answer any questions you may have or to provide you with any information you may need as you pursue this very serious matter.

Colorado
State
University

Department of Chemistry
Fort Collins, Colorado 80523-1872
FAX: (970) 491-1801

CONFIDENTIAL MEMORANDUM

TO: Raymond Persik

FROM: Oren Anderson "s/Oren Anderson"

RE: Professional Behavior

DATE:

September 22, 1997

Recently I have become aware of allegations made by several female students concerning your behavior toward them. I have met with Roselyn Cutler of the Equal Opportunity Office twice to discuss these allegations, and I have also reviewed them with Drs. Solie and Boldt. In addition, you discussed some of these allegations with me in a meeting on September 15.

Certain of the allegations made, taken together with your statements about these situations both to Ms. Cutler and others, have raised serious concerns about your professional conduct during the discharge of your duties as a Graduate

Teaching Assistant. In the Department of Chemistry, we expect every one of our Graduate Teaching Assistants to carry out their assigned duties and all related activities with the highest level of professionalism toward all students at all times. Anything less demeans and compromises the standards of this department, and is simply unacceptable.

I shall expect you to meet this standard of professional behavior in every aspect of your interactions with our students in the future. If you are uncertain as to what is expected of you, please do not hesitate to contact either Dr. Solie or myself. Note this well--I do not wish to hear any complaints of this nature, or any similar nature, about you again. Any allegation of unprofessional conduct in the future, if substantiated, could lead to dismissal as a Graduate Teaching Assistant.

**cc:**
**R. Cutler**
**T. Solie**
**N. Boldt**

## 10 USCS

### 10 USCS § 141. Inspector General

(a) There is an Inspector General of the Department of Defense, who is appointed as provided in section 3 of the Inspector General Act of 1978 (Public Law 95-452; 5 U.S.C. App. 3).
(b) The Inspector General performs the duties, has the responsibilities, and exercises the powers specified in the Inspector General Act of 1978.
(Added Oct. 1, 1986, P.L. 99-433, Title I, § 108, 100 Stat. 998; Nov. 30, 1993, P.L. 103-60, Div A, Title IX, Subtitle A, § 901(a)(1), 107 Stat. 1726.)

### 10 USCS § 331. Federal aid for State governments

Whenever there is an insurrection in any State against its government, the President may, upon the request of its legislature or its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces as he considers necessary to suppress the insurrection.
(Aug. 10, 1956, ch 1041, § 1, 70A Stat. 15.)

## 10 USCS § 333 (1999) Interference with State and Federal law.

The President, by using militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, and insurrection, domestic violence, unlawful combination, or conspiracy, if it-

(1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or give that protection; or

(2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

(Aug. 10, 1956, ch 1041, § 1, 70A Stat. 15.)

## 10 USCS § 371. Use of information collected during military operations

(a) The Secretary of Defense may, in accordance with other applicable law, provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military training or operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials.

(b) The needs of civilian law enforcement officials for information shall, to the maximum extent practicable, be

taken into account in the planning and execution of military training or operations.

(c) The Secretary of Defense shall ensure, to the extent consistent with national security, that intelligence information held by the Department of Defense and relevant drug interdiction or other civilian law enforcement matters is provided promptly to appropriate civilian law enforcement officials.
(Added Dec. 1, 1981, P.L. 97-86, Title IX, § 905(a)(1) in part, 95 Stat. 1115; Sept. 29, 1988, P.L. 100-456, Div A, Title XI, § 1104(a), 102 Stat. 2043.)

**10 USCS § 372. Use of military equipment and facilities**

(a) In general. The Secretary of Defense may, in accordance with other applicable law, make available any equipment (including associated supplies or spare parts), base facility, or research facility of the Department of Defense to any Federal, State, or local civilian law enforcement official for law enforcement purposes.
(b) Emergencies involving chemical and biological agents. (Not applicable)

**10 USCS § 380. Enhancement of cooperation with civilian law enforcement officials**

(a) The Secretary of Defense, in cooperation with the Attorney General, shall conduct an annual briefing of law enforcement personnel of each State (including law enforcement personnel of the political subdivisions of each State) regarding information, training, technical support, and

-equipment and facilities available to civilian law enforcement personnel from the Department of Defense...
(b)-(c) Not shown in appendix here

## 18 USCS

### 18 USCS § 241. Conspiracy against rights

If two or more -persons conspire- to-injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured. They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.
(June 25, 1948, ch 645, § 1, 62 Stat. 696; April 11, 1968, P.L. 90-284, Title I, § 103(a), 82 Stat. 75; Nov. 18, 1988, P.L. 100-690, Title VII, Subtitle B, § 7018(a), (b)(1), 102 Stat. 4396.)
HISTORY; ANCILLARY LAWS AND DIRECTIVES
Prior law revision:
This section is based on Act March 4, 1909, ch 321, § 19, 35 Stat. 1092 (former 18 U.S.C. § 51).

Clause making conspirator ineligible to hold office was omitted as incongruous because it attaches ineligibility to hold office to a person who may be a private citizen and who was convicted of conspiracy to violate a specific statute. There seems to be no reason for imposing such a penalty in

the case of one individual crime, in view of the fact that other crimes do not carry such a severe consequence. The experience of the Department of Justice is that this unusual penalty has been an obstacle to successful prosecution for violations of the act. Mandatory punishment provision was rephrased in the alternative because the court has this discretion by making use of its power to suspend sentence under 18 USCS § 3651.
Minor changes in phraseology were made.

**18 USCS § 1001. Statements or entries generally**

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses or uses any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both.

**18 USCS § 1341. Frauds and swindles**

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or

delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing; shall be fined not more than $1,000 or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.
(June 25, 1948 ch 645, § I, 62 Stat. 763; May 24, 1949, ch 139, § 34, 63 Stat. 94; Aug. 12, 1970, P.L. 91-375, § 6(j)(11), 84 Stat. 778; Aug. 9, 1989, P. L. 101-73, Title IX, Subtitle F, § 961(i), 103 Stat. 500; Nov. 29, 1990, P.L. 101-647, Title XXV, Subtitle A, § 2504(h), 104 Stat. 4861.

**18 USCS § 1584. Sale into involuntary servitude**

Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, and person for any term, or brings within the United States any person so held, shall be fined not more than $5000 or imprisoned not more than five years, or both.
(June 24, 1948, ch 645, § 1, Stat. 773.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES
Prior law and revision:
This section is based on Act March 4, 1909, ch 321, §§ 248, 271, 35 Stat. 1139, 1142 (former 18 U.S.C. §§ 423 and 446).

**18 USCS § 1951. Interference with commerce by threats or violence**

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section-

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15 [15 USCS § 17], sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45 [45 USCS §§ 151-188].

(June 25, 1948, ch 645, § 1, 62 Stat. 793; Sept. 13, 1994, P.L. 103-322, Title XXXIII, § 330016(1)(L), 108 Stat. 2147.)

**18 USCS § 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises**

(a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to-

(1) distribute the proceeds of any unlawful activity; or

(2) commit any came of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform-

(A) an act described in paragraph (1) or (3) shall be fined under this title or imprisoned not more than 5 years, or both; or

(B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years. or both, and if death results shall be imprisoned or any term of years or for life.

(b) As used in this section (i) "unlawful activity" means (l) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances as defined in section 102(6) of the Controlled Substances Act [ 21 USCS § 802 (b)], or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, or (3) any act which is indictable under subchapter II of chapter II of charter 53 of title 31, United States Code, or under 1956 or of this ut a and (ii) the term "State" includes a State of the

United States, the District of Columbia, and any commonwealth, territory or , possession of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under this supervision of the Secretary of the Treasury.
(Added Sept. 13, 1961. P.L. 87-228 § 1(a), 75 Stat. 498; July 7, 1965, P.L. §89-68, 79 Stat. 212; Oct. 27, 1970, P. L. 91-513, Title II, Part G. § 701(i)(2), 84 Stat. 1282; Oct. 27, 1986, P.L. 99-570, Title I, Subtitle H, § 1365(a), 100 Stat. 3207-35; Nov. 29, 1990, P.L. 101-647, Title XII, § 1205 (i), Title XVI, § 1604, 104 Stat. 4831, 4843; Sept. 13, 1994, P.L. 103-322, Title XIV, § 140007(a), Title XXXIII, § 330016(1)(L), 108 Stat. 2033, 2147.)

**18 USCS § 1961. Definitions**

As used in this chapter [18 USCS §§ 1961 et seq.]-
(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 or the Controlled Substances Act [21 USCS § 802]), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title18, United States Code 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028, (relating to fraud and related activity in connection with identification

documents) , section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully) , section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization of citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice , section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to a false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1588 (relating to peonage and slavery), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating tothe prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313

(relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of copyvright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking, in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) an act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act [21 USCS § 802]), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 [8 USCS § 1324] (relating to bringing in and harboring certain aliens), section 277 [8 USCS § 1327] (relating to aiding or assisting certain aliens to enter the United States), or section 278 (8 USCS § 1328] (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or

(G) any act that is indictable under any provision listed in section 2332b(g)(5)(B);
(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;
(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;
(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;
(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;
(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;
(7) "racketeering investigator" means an attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter [18 USCS §§ 1961 et seq.];
(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of

ascertaining whether any person has been involved in any violation of this chapter [ 18 USCS §§ 1961 et seq.] or of any order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter [18 USCS §§ 1 61 et seq.];
(9) "documentary material" includes any book, paper, document, record, recording, or other material; and
(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter [18 USCS §§ 1961 et seq.]. Any department.or agency so designated may use in investigations authorized by this chapter [18 USCS §§ 1961 et seq.] either the investigative provisions of this chapter [18 USCS §§ 1961 et seq.] or the investigative power of such department or agency otherwise conferred by law.

**18 USCS § 2241. Aggravated sexual abuse**

(a) By force or threat. Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly causes another person to engage in a sexual act-

(1) by using force against that other person; or

(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(b) By other means. Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly-

(1) renders another person unconscious and thereby engages in a sexual act with that other person; or

(2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby

(A) substantially impairs the ability of that other person to appraise or control conduct; and

(B) engages in a sexual act with that other person;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(c) With children. Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(d) State of mind proof requirement. In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.

(Added Nov. 10, 1986, P. L. 99-646, § 87(b), 100 Stat. 3620 and Nov. 14, 1986, P.L. 99-654, § 2, 100 Stat. 3660.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

Identical sections 2241 were added by Act Nov. 10, 1986 and Act Nov. 14, 1986.

Effective date of section:

Act Nov. 10, 1986, P.L. 99-646, § 87(e), 100 Stat. 3624 and Act Nov. 14, 1986, P.L. 99-654, § 4, 100 Stat. 3664, both of

which appear as a note to this section, provide that this section shall take effect 30 days after their respective enactment.

## 18 USCS, Chapter 313. Offenders with Mental Disease or Defect. § 4241 et seq.

### 18 USCS § 4241. Determination of mental competency to stand trial

(a) Motion to determine competency of defendant. At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequence of the proceedings against him or to assist him or to assist properly in his defense.
(b) Psychiatric or psychological examination and report. Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant he conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).
(c)-(e) Not reproduced

## 22 USCS International Religious Freedom. § 6401 Findings; policy

(a) Findings. Congress makes the following findings:
(1) The right to freedom of religion undergirds the very origin and existence of the United States. Many of our Nation's founders fled religious persecution abroad, cherishing in their hearts and minds the ideal of religious freedom. They established in law, as a fundamental right and as a pillar of our Nation, the right to freedom of religion. From its birth to this day, the United States has prized this legacy of religious freedom and honored this heritage by standing for religious freedom and offering refuge to those suffering religious persecution.
(2) Freedom of religious belief and practice is a universal human right and fundamental freedom articulated in numerous international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Helsinki Accords, the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, the United Nations Charter, and the European Convention for the Protection of Human Rights and Fundamental Freedoms.
(3) Article 18 of the Universal Declaration of Human Rights recognizes that "Everyone has the right to freedom of thought, conscience, and religion. This right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.". Article 18(1) of the International Covenant on Civil and Political Rights recognizes that "Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to

have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching". Governments have the responsibility to protect the fundamental rights of their citizens and to pursue justice for all. Religious freedom is a fundamental right of every individual, regardless of race, sex, country, creed, or nationality, and should never be arbitrarily abridged by any government.

(4) The right to freedom of religion is under renewed and, in some cases, increasing assault in many countries around the world. More than one-half of the world's population lives under regimes that severely restrict or prohibit the freedom of their citizens to study, believe, observe, and freely practice the religious faith of their choice. Religious believers and communities suffer both government-sponsored and government-tolerated violations of their rights to religious freedom. Among the many forms of such violations are state-sponsored slander campaigns, confiscations of property, surveillance by security police, including by special divisions of "religious police", severe prohibitions against construction and repair of places of worship denial of the right to assemble and relegation of religious communities to illegal status through arbitrary registration laws, prohibitions against the pursuit of education or public office, and prohibitions against publishing, distributing, or possessing religious literature and materials.

(5) Even more abhorrent, religious believers in many countries face such severe and violent forms of religious persecution as detention, torture, beatings, forced marriage, rape, imprisonment, enslavement, mass resettlement, and death merely for the peaceful belief in, change of or practice of their faith. In many countries, religious believers are forced to meet secretly, and religious leaders are targeted by national security forces and hostile mobs.

(6) Though not confined to a particular region or regime, religious persecution is often particularly widespread, systematic, and heinous under totalitarian governments and in countries with militant, politicized religious majorities.
(7) Congress has recognized and denounced acts of religious persecution through the adoption of the following resolutions:

(A) House Resolution 515 of the One Hundred Fourth Congress, expressing the sense of the House of Representatives with respect to the persecution of Christians worldwide.

(B) Senate Concurrent Resolution 71 of the One Hundred Fourth Congress, expressing the sense of the Senate regarding persecution of Christians worldwide.

(C) House Concurrent Resolution 102 of the One Hundred Fourth Congress, expressing the sense of the House of Representatives concerning the emancipation of the Iranian Baha'i community.

(b) Policy. It shall be the policy of the United States, as follows:
(1) To condemn violations of religious freedom, and to promote, and to assist other governments in the promotion of, the fundamental right to freedom of religion.
(2) To seek to channel United States security and development assistance to governments other than those found to be engaged in gross violations of the right to freedom of religion, as set forth in the Foreign Assistance Act of 1961 [22 USCS §§ 2151 et seq.], in the International Financial Institutions Act of 1977, and in other formulations of United States human rights policy.
(3) To be vigorous and flexible, reflecting both the unwavering commitment of the United States to religious freedom and the desire of the United States for the most effective and principled response, in light of the range of violations of religious freedom by a variety of persecuting

regimes, and the status of the relations of the United States with different nations.
(4) To work with foreign governments that affirm and protect religious freedom, in order to develop multilateral documents and initiatives to combat violations of religious freedom and promote the right to religious freedom abroad.
(5) Standing for liberty and standing with the persecuted, to use and implement appropriate tools in the United States foreign policy apparatus, including diplomatic, political, commercial, charitable, educational, and cultural channels, to promote respect for religious freedom by all governments and peoples.
(Oct. 27, 1998, P. L. 105-292, § 2, 112 Stat. 2788.)

**22 USCS (2003)Trafficking Victims Protection § 7101. Purposes and findings**

**22 USCS §7101. Purposes and findings**

(a) Purposes. The purposes of this division are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of trafficker, and to protect their victims.

(b) Findings. Congress finds that:
(1) As the 21st century begins, the degrading institution of slavery continues throughout the world. Trafficking in persons is a modem form of slavery, and it is the largest manifestation of slavery today. At least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately

50,000 women and children are trafficked into the United States each year.

(2) Many of these persons are trafficked into the international sex trade, often by force, fraud, or coercion. The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, involving activities related to prostitution, pornography, sex tourism, and other commercial sexual services. The low status of women in many parts of the world has contributed to a burgeoning of the trafficking industry.

(3) Trafficking in persons is not limited to the sex industry. This growing transnational crime also includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide.

(4) Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin. Traffickers lure women and girls into their networks through false promises of decent working conditions at relatively good pay as nanies, maids, dancers, factory workers, restaurant workers, sales clerks, or models. Traffickers, also buy children from poor families and sell them into prostitution or into various types of forced or bonded labor.

(5) Traffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable.

(6) Victims are often forced through physical violence to engage in sex acts or perform slavery like labor. Such force includes rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and coercion.

(7) Traffickers often make representations to their victims that physical harm may occur to them or others should the victim escape or attempt to escape. Such representations can have the same coercive effects on victims as direct threats to inflict such harm.
(8) Trafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises. Such trafficking is the fastest growing source of profits for organized criminal enterprises worldwide. Profits from the trafficking industry contribute to the expansion of organized crime in the United States and worldwide. Trafficking in persons is often aided by official corruption in countries of origin, transit, and destination, thereby threatening the rule of law.
(9) Trafficking includes all the elements of the crime of forcible rape when it involves the involuntary participation of another person in sex acts by means of fraud, force, or coercion.
(10) Trafficking also involves violations of other laws, including labor and immigration codes and laws against kidnapping, slavery, false imprisonment, assault, battery, pandering, fraud, and extortion.
(11) Trafficking exposes victims to serious health risks. Women and children trafficked in the sex industry are exposed to deadly diseases, including HIV and AIDS. Trafficking victims are sometimes worked or physically brutalized to death.
(12) Trafficking in persons substantially affects interstate and foreign commerce. Trafficking for such purposes involuntary servitude, peonage, and other forms of forced labor has an impact on the nationwide employment network and labor market. Within the context of slavery, servitude, and labor or services which are obtained or maintained through coercive conduce that amounts to a condition of servitude, victims are subjected to a range of violations.

(13) Involuntary servitude statutes are intended to reach cases in which persons are held in a condition of servitude through nonviolent coercion. In United States v. Kozminski, 487 U.S. 931 [101 L. Ed. 2d 788] (1988), the Supreme Court found that section 1584 of title 18, United States Code, should he narrowly interpreted, absent a definition of involuntary servitude by Congress. As a result, that section was interpreted to criminalize only servitude that is brought about through use or threatened use of physical or legal coercion, and to exclude other conduct that can have the same purpose and effect.

(14) Existing legislation and law enforcement in the United States and other countries are inadequate to deter tracking and bring traffickers to justice, failing to reflect the gravity of the offenses involved. No comprehensive law exists in the United States that penalizes the range of offenses involved in the trafficking scheme. Instead, even the most brutal instances of trafficking in the sex industry are often punished under laws that also apply to lesser offenses, so that traffickers typically escape deserved punishment.

(15) In the United States, the seriousness of this crime and its components is not reflected in current sentencing guidelines, resulting in weak penalties for convicted traffickers.

(16) In home countries, enforcement against traffickers is also hindered by official indifference, by corruption, and sometimes even by official participation in trafficking.

(17) Existing laws often fail to protect victims of trafficking, and because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves.

(18) Additionally, adequate services and facilities do not exist to meet victims needs regard health care, housing, education, and legal assistance, which safely reintegrate trafficking victims into their home countries.

(19) Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation.

(20) Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.

(21) Trafficking of persons is an evil requiring concerted and vigorous action by countries of origin, transit or destination, and by international organizations.

(22) One of the founding documents of the United States, the Declaration of Independence, recognizes the inherent dignity and worth of all people. It states that all men are created equal and that they are endowed by their Creator with certain unalienable rights. The right to be free from slavery and involuntary servitude is among those unalienable rights. Acknowledging this fact, the United States outlawed slavery and involuntary servitude in 1865, recognizing them as evil institutions that must be abolished. Current practices of sexual slavery and trafficking of women and children are similarly abhorrent to the principles upon which the United States was founded.

(23) The United States and the international community agree that trafficking in persons involves grave violations of human rights and is a matter of pressing international concern. The international community has repeatedly

condemned slavery and involuntary servitude, violence against women, and other elements of trafficking, through declarations, treaties, and United Nations resolutions and reports, including the Universal Declaration of Human Rights; the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the 1948 American Declaration on the Rights and Duties of Man; the 1957 Abolition of Forced Labor Convention; the International Covenant on Civil and Political Rights: the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; United Nations General Assembly Resolutions 50/167, 51/66, and 52/98; the Final Report of the World Congress against Sexual Exploitation of Children (Stockholm, 1996); the Fourth World Conference on Women (Beijing, 1995); and the 1991 Moscow Document of the Organization for Security and Cooperation in Europe.

(24) Trafficking in persons is a transnational crime with national implications. To deter international trafficking and bring its perpetrators to justice, nations including the United States must recognize that trafficking is a serious offense. This is done by prescribing appropriate punishment giving priority to the prosecution of trafficking offenses, and protecting rather than punishing the victims of such offenses. The United States must work bilaterally and multilaterally to abolish the trafficking industry by taking steps to promote cooperation among countries linked together by international trafficking routes. The United States must also urge the international community to take strong action in multilateral fora to engage recalcitrant countries in serious and sustained efforts to eliminate trafficking and protect trafficking victims. (Oct. 28, 2000, P. L. 106-386, Div A, § 102, 114 Stat. 1466.)

## 42 USCS

### 42 USCS § 1981. Equal rights under the law

(a) Statement of equal rights.
(b) "Make and enforce contracts" defined.
(c) Protection against impairment.
1981a. Damages in cases of intentional discrimination in employment
(a) Right of recovery.
(b) Compensatory and punitive damages.
(c) Jury trial.
(d) Definitions.
1982. Property rights of citizens

GENERALLY

(a) Statement of equal rights. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make enforce contracts, to sue, be parties, give evidence, and to the full and eq benefit of all laws and proceedings for the security of persons and property is enjoyed by white citizens, and shall be subject to like punishment, pal penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined. For purposes of this section, the term make and enforce contracts". includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.
(c) Protection. against Impairment. The rights protected by this section protected against impairment by nongovernmental discrimination and impairment under color of State law.

## 42 USCS. § 1983 Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia.`(R. S. § 1979; Dec. 29, 1979, P.L 96-170, §1, 93 Stat 1284, Oct 19, 1996, P. L. 104-317, Title III, § 309(c), 110 Stat. 3853.)

## 42 USCS § 1985. Conspiracy to interfere with civil rights

(1) If two or more persons in any State or Territory conspir to prevent, by force, intimidation, or threat, any person fro accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district or place, where his duties as an officer of the United States to leave any State, district or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge thereof, or to injure his

property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for

President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. (R.S. § 1980.)

**42 USCS § 1986. Conspiracy to interfere with civil rights**

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section [42 USCS § 1985], are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case on the case; and any number of persons guilty of such wrongful neglect or refusal maybe joined as defendants in the action, and if the death of any party be caused buy any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefore, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under this provisions of this

section shall be sustained which is not commenced within one year after the cause of action accrued. (R.S. § 1981.)

**42 USCS § 2000b. Civil actions by the Attorney General**

(a) Complaint; certification; institution of civil action; relief requested; jurisdiction; impleading additional parties as defendants. Whenever the Attorney General receives a complaint in writing signed by an individual to the effect that he is being deprived of or threatened with the loss of his right to the equal protection of the laws, on account of his race, color, religion, or national origin, by being denied equal utilization of any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, other than a public school or public college as defined in section 401 of title IV hereof [42 USCS § 2000c], and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly progress of desegregation in public facilities, the Attorney General is authorized to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) Persons unable to initiate and maintain legal proceedings. The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within

the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation: or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.
(July 2, 1964, P.L. 88-352, Title III, § 301, 78 Stat. 246.)

## 42 USCS § 2000b-1. Liability of United States for costs and attorney's fee

In any action or proceeding under this title [42 USCS §§ 2000b-2000b-3] the United States shall be liable for costs, including a reasonable attorney's fee, the same as a private person.

(July 2, 1964, P.L. 88-352, Title III, § 302, 78 Stat. 246.)

## USCS § 2000b-2. Personal suits for relief against discrimination in public facilities

Nothing in this title [42 USCS §§ 2000b-2000b-3] shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in any facility covered by this title [42 USCS §§ 2000b-2000b-3].

(July 2, 1964, P.L. 88-352, Title III, § 303, 78 Stat. 246.)

**42 USCS. § 2000e-2. Unlawful employment practices**

(a) Employer practices. It shall be an unlawful employment practice for an employer-

> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, or classify his- employees or applicants for employment any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices. It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) Labor organization practices. It shall be an unlawful employment practice for a labor organization-

> (1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;
>
> (2) to limit, segregate, or classify its membership or applicants for member- ship, or to classify or fail or

refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training programs. It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program, established to provide apprenticeship or other training.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religions. Notwithstanding any other provision of this title [42 USCS §§ 2000e et seq.], (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of

that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if -such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) Members of Communist Party or Communist-action or Communist- front organizations. As used in this title [42 USCS §§ 2000e et seq.], the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

(g) National security. Notwithstanding any other provision of this title [42 USCS §§ 2000e et seq.], it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if-

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions. Notwithstanding any other provision of this title [42 USCS §§ 2000 e et seq.], it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this title [42 USCS §§ 2000e et seq.] for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such

differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)).

(i) Businesses or enterprises extending preferential treatment to Indians. Nothing contained in this title [42 USCS §§ 2000e et seq.] shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance. Nothing contained in this title [42 USCS §§ 2000e et seq.] shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title [42 USCS §§ 2000e et seq.] to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by an employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) Burden of proof in disparate impact cases. (1)(A) An unlawful employment practice based on disparate impact is established under this title only if-

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B)(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decision making process are not capable of separation for analysis, the decision making process may be analyzed as one employment practice. (ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this title.
(3) Notwithstanding any other provision of this title [42 USCS §§ 2000e et seq.], a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act or any other provision of Federal law, shall be considered an unlawful employment practice under this title only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(l) Prohibition of discriminatory use of test scores. It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices. Except as otherwise provided in this title [42 USCS§§ 2000e et seq.], an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any

employment practice, even though other factors also motivated the practice.

(n) Resolution of challenges to employment practices implementing litigated or consent judgments or orders.

(1)(A) Notwithsanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws-

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had-

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change m law or fact.

(2) Nothing in this subsection shall be construed to-

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;
(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;
(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or
(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28, United States Code.

**42 USCS § 2000e-3. Other unlawful employment practices**

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings. It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-

management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has Opposed any Practice made an unlawful employment practice by this title [42 USCS §§ 2000e-2000e-17], or because he has made a charge, testified, assisted, or participated in any manner in an investigation, Proceeding, or hearing under this title [42 investigation, Proceeding, or hearing under this title [42 USCS §§ 2000e-2000e-171.1

(b) printing or publication of notices or advertisements indicating Prohibited preference, limitation, specification, or discrimination; occupational qualification exception. It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.
(July 2, 1964, P. L. 88-352, Title VIL § 704, 78 Stat. 257; Mar. 24, 1972, P.L. 92-261, § 8(c), 86 Stat 109.)

## 42 § 2000e-5. Enforcement provisions

(a) Power of Commission to prevent unlawful employment practices. The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth m section 703 or 704 of this title [42 USCS §§ 2000e-2 or 2000e-3].

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause. Whenever a charge is made by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by

the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings, notification of State or local authority; time for filing charges with Commission; commencement of proceedings. In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to

institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) [(b)] by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for -the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission. In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency. A charge under this section shall be made within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to bear and determine can; assignment of case for hearing; expedition of case; appointment of master. (1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement

acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may

deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation, that prompt judicial action is necessary to carry out the purposes of this Act [title], the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title [42 USCS §§ 2000e et seq.]. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the

employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district m which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district m which the respondent has his principal office shall in all cases be considered a district m which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders. If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as

may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission-or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a) [42 USCS § 2000e-3(a)].

(h) Provisions of 29 USCS §§ 101 et seq. not applicable to civil actions for prevention of unlawful practices. The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 101-115), shall not apply with respect to civil actions brought under this section.

(i) Proceedings by Commission to compel compliance with judicial orders. In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals. Any civil action brought under this section and any proceedings brought under subsection (i) shall be subject

to appeal as provided in sections 1291 and 1292, title 28, United States Code.

(k) Attorney's fee, liability of Commission and United States for costs. In any action or proceeding under this title [42 USCS §§ 2000e et seq.] the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

(July 2, 1964, P.L. 88-352, Title VII, § 706, 78 Stat. 259-Mar. 24, 1972, P.L. 92-261, § 4, 86 Stat. 104.)

**USCS § 2000bb. Religious Freedom Restoration Act of 1993 Congressional findings and declaration of purposes**

(a) Findings. The Congress finds that-

(1) the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;

(2) laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;

(3) governments should not substantially burden religious exercise without compelling justification;

(4) in Employment Division v. Smith, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and

(5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

(b) Purposes. The purposes of this Act are-

(1) to restore the compelling interest test as set forth in Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and

(2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government. (Nov. 16, 1993, P.L. 103-141, § 2, 107 Stat. 1488.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Nov. 16, 1993, P.L. 103-141, 107 Stat. 1488, popularly known as the Religious Freedom Restoration Act of 1993, which appears generally as 42 USCS §§ 2000bb et seq. For full classification of this Act, consult USCS Tables volumes.

**42 USCS § 2000bb-1. Free exercise of religion protected**

(a) In general. Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Exception. Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person-

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) Judicial relief. A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed

by the general rules of standing under article III of the Constitution.
(Nov, 16, 1993, P.L. 103-141, § 3, 107 Stat. 1488.)

## 42 USCS § 2000bb-2. Definitions

As used in this Act-

(1) the term "government" includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, a State, or a subdivision of a State;

(2) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States;

(3) the term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion; and

(4) the term "exercise of religion" means the exercise of religion under the First Amendment to the Constitution.
(Nov. 16, 1993, P.L. 103-141, § 5, 107 Stat. 1489.)

## 42 USCS § 2000bb-3. Applicability

(a) In general. This Act applies to all Federal and State law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after the enactment of this Act [enacted Nov. 16, 1993].

(b) Rule of construction. Federal statutory law adopted after the date of the enactment of this Act [enacted Nov. 16, 1993] is subject to this Act unless such law explicitly excludes such application by reference to this Act.

(c) Religious belief unaffected. Nothing in this Act shall be construed to authorize any government to burden any religious belief.
(Nov. 16, 1993, P. L. 103-141, § 6, 107 Stat. 1489.)

## 47 USCS.

### 47 USCS. § 223 (1995). "Obscene or harassing telephone calls in the District of Columbia or in interstate or foreign communications"

Prohibited acts; penalties. Whoever-(1) in the District of Columbia or in interstate or foreign communication by means of telephone – (D) makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number"

a. "venue would appear to be appropriate in either the caller's or the recipient's district."

b. "With respect to the date or dates of a violation and whether or not the calls are 'repeated,' the calls should be 'in close enough proximity to one another to rightly be called a single episode, and not separated by periods of months or years.'" United States v. Darsey, 342 F. Supp. 311, 313 (E.D. Pa 1972).

## 50 USCS.

### 50 USCS Appx §§ 501 et. seq. Soliders' and Sailors' Civil Relief Act of 1940.

## 50 USCS Appx §§ 510. Purpose; suspension of enforcement of civil liabilities

In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act [50 USCS Appx. §§ 501 et seq.] remains in force.
(Oct. 17, 1940, ch 888, § 100, 54 Stat. 1179.)

## 50 USCS Appx §§ 511. Definitions

(1) The term "person in military service", the term "persons in military service", and the term "persons in the military service of the United States", as sued in this Act [50 USCS Appx. §§ 501 et seq.], shall include the following persons and no others: All members of the Army of the United States, … The term "military service", as used in this Act [50 USCS Appx. §§ 501 et seq.], shall signify Federal service on active duty either with any branch of the service heretofore referred to or mentioned as well as training and education under the supervision of the United States preliminary to induction into the military service. The terms

'active service" or "active duty" shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) The term "period of military service", as used in this Act [50 USCS Appx,. §§ 501 et seq.], means, in the case of any person, the period beginning on the date on which the person enters active service and ending on the date of the person's release from active service or death while in active service, but in no case later than the date this Act {50 USCS Appx §§ 501 et seq.] ceases to be in force.

(3) The term "person", when used in this Act [50 USCS Appx. §§ 501 et seq.], with reference to the holder of any right alleged to exist against a person in military service or against a person secondarily liable under such right, shall include individuals, partnerships, corporations, and any other forms of business association.

(4) The term "court", as used in this Act [50 USCS Appx. §§ 501 et seq.], shall include any court of court of competent jurisdiction of the United States or of any State, whether or not a court of record.

**50 USCS Appx §§ 512. Territorial application; jurisdiction of courts; form of procedure**

(1) The provisions of this Act [50 USCS Appx. §§ 501 et seq.] shall apply to the United States, the several States and Territories, the District of Columbia, and all territory subject to the jurisdiction of the United States and to proceedings commenced in any court therein, and shall be enforced through the usual forms of procedure obtaining in such courts or under such regulations as may be by them prescribed.

(2) When under this Act [50 USCS Appx. §§ 501 et seq.] any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court.

**50 USCS Appx §§ 521. Stay of proceedings where military service effects conduct thereof**

At any stage thereof any action or proceedings in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this Act [50 USCS Appx. §§ 501 et seq.], unless, in the opinion of the court, the ability of the plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service.

## 50 USCS Appx. §§ 523. Stay or vacation of execution of judgments, attachments, etc.

In any action or proceeding commenced in any court against a person in military service, before or during the period of such service, or within sixty days thereafter, the court may, in its discretion, on its discretion, on its own motion, or on application to it by such person or some person on his behalf shall, unless in the opinion of the court the ability of the defendant to comply with the judgment or order entered or sought is not materially affected by reason of his military affected by reason of his military service-

(a) Stay the execution of any judgment or order entered against such person, as provided in this Act [50 USCS Appx. §§ 501 et seq.]; and

(b) Vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment as provided in this Act [50 USCS Appx. §§ et seq.].

(Oct. 17, 1940, ch 888, § 203, 54 Stat. 1181.)

## 50 USCS Appx. §§ 524. Duration and term of stays; codefendants not in service

Any stay of any action, proceedings, attachment, or execution, ordered by any court under the provisions of this Act [50 USCS Appx. 501 et seq.] may, except as otherwise provided, be ordered for the period of military service and three months thereafter or any part of such period, and subject to such terms as may be just, whether as to payment in installments of such amounts and at such times as the court

may fix or otherwise. Where the person in military service as a codefendant with others the plaintiff may nevertheless by leave of the court proceed against the others.
(Oct. 17, 1940, ch 888, § 204, 54 Stat. 1181.)

**50 USCS (1996) Electronic Surveillance § 1801. Definitions**

d. "Sabotage" means activities that involve a violation of chapter 105 of title 18, US Code, [18 USCS §§ 2151 et seq.]
k. "Aggrieved person" means a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance.
m. "Person" means any individual, including any officer or employee of the Federal Government, or any group, entity association.

**Colorado Revised Statutes (C.R.S.)**

**C.R.S. 12-43-218 (2002) Disclosure of confidential communications.-**

(1) A licensee, school psychologist, registrant, or unlicensed psychotherapist shall not disclose, without the consent of the client, any confidential communications made by the client, or advice given thereon, in the course of professional employment; nor shall a licensee's, school psychologist's, registrant's, or unlicensed psychotherapist's employee or associate, whether clerical or professional, disclose any knowledge of said communications acquired in such capacity; nor shall any person who has participated in any therapy conducted under the supervision of a licensee, school psychologist, registrant, or unlicensed

psychotherapist, including, but not limited to, group therapy sessions, disclose any knowledge gained during the course of such therapy without the consent of the person to whom the knowledge relates.

(2) Subsection (1) of this section shall not apply when:

(a) A client or the heirs, executors, or administrators of a client file suit or a complaint against a licensee, school psychologist, registrant, or unlicensed psychotherapist on any cause of action arising out of or connected with the care or treatment of such client by the licensee, school psychologist, registrant, or unlicensed psychotherapist;

(b) A licensee, school psychologist, registrant, or unlicensed psychotherapist was in consultation with a physician, registered professional nurse, licensee, school psychologist, registrant, or unlicensed psychotherapist against whom a suit or complaint was filed based on the case out of which said suit or complaint arises;

(c) A review of services of a licensee, school psychologist, registrant, or unlicensed psychotherapist is conducted by any of the following:
(I) A board or a person or group authorized by such board to make an investigation on its behalf;
(II) The governing board of a hospital licensed pursuant to part 1 of article 3 of title 25, C.R.S., where said licensee, school psychologist, registrant, or unlicensed psychotherapist practices or the medical staff of such hospital if the medical staff operates pursuant to written bylaws approved by the governing board of such hospital; or
(III) A professional review committee established pursuant to section 12-43-203 (11) if said person has signed a release authorizing such review.

(3) The records and information produced and used in the review provided for in paragraph (c) of subsection (2) of this section shall not become public records solely by virtue of the use of such records and information. The identity of any client whose records are so reviewed shall not be disclosed to any person not directly involved in such review process, and procedures shall be adopted by a board, hospital, association, or society to ensure that the identity of the client is concealed during the review process itself and to comply with the provisions of section 12-43-224 (4).

(4) Subsection (1) of this section shall not apply to any delinquency or criminal proceeding, except as provided in section 13-90-107, C.R.S., regarding any delinquency or criminal proceeding involving a licensed psychologist.

(5) Nothing in this section shall be deemed to prohibit any other disclosures required by law.
Source: L. 88: Entire article R&RE, p. 544, § 1, effective July 1. L. 89: (4) amended, p. 699, § 5, effective July 7. L. 98: (1), (2)(a), (2)(b), IP(2)(c), (2)(c)(I), (2)(c)(II), and (3) amended, p. 1114, § 16, effective July 7. L. 2000: (1), (2)(a), (2)(b), IP(2)(c), and (2)(c)(II) amended, p. 1842, § 19, effective August 2.

Law reviews. For article, "New Definitions of Therapist Confidentiality", see 18 Colo. Law. 251 (1989). For article, "Admissibility of Mental and Physical Health Records and Testimony", see 29 Colo. Law. 61 (December 2000).

**C.R.S. 13-6-106 (2002). Original Criminal Jurisdiction**

1) The county court shall have concurrent original jurisdiction with the district court in the following criminal matters:

(a) Criminal actions for the violation of state laws which constitute misdemeanors or petty offenses, except those actions involving children over which the juvenile court of the city and county of Denver or the district courts of the state, other than in Denver, have exclusive jurisdiction;

(b) The issuance of warrants, the conduct of preliminary examinations, the conduct of dispositional hearings pursuant to section 16-5-301 (1), C.R.S., and section 18-1-404 (1), C.R.S., the issuance of bind over orders, and the admission to bail in felonies and misdemeanors

**C.R.S. 13-25-131 (1999). Civil actions – sexual assault – certain evidence presumed irrelevant.**

(1) In any civil action for damages by an alleged victim which alleges damages resulting from a sexual assault on a client by any person who enters into a professional-client relationship that permits professional physical access to the client's person or the **opportunity to affect or influence the thought processes or emotions of such client, including, but not limited to**, actions for professional malpractice or assault and battery, evidence of specific instances of the victim's prior or subsequent sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall be presumed to be irrelevant, except as provided in subsections (2) and (4) of

this section. The persons to whom this subsection (1) applies in a civil action against such persons shall include any psychotherapist as defined in section 18-3-405.5, C.R.S., and medical… (1) shall also apply in a civil action against a parent or other person, in a position of trust, power, or authority over any child or other person, in a civil action by or on behalf of such other person.

**C.R.S. 18-1-602 (1999). Behavior of Another.**

"(1) A person is legally accountable for the behavior of another if: (b) He acts with the culpable mental state sufficient for the commission of the offense in question and he causes an innocent person to engage in such behavior. (2) 'innocent person' includes any person not guilty of the offense in question, despite his behavior, because of duress, legal incapacity or exemption, or unawareness of the criminal nature of the conduct in question or of the defendant's criminal purpose…"

**C.R.S. 18-1-603 (1999) Complicity.**

"A person is legally accountable as principal for the behavior of another constituting a criminal offense if, with the intent to promote or facilitate the commission of the offense, he or she aids, abets, advises, or encourages the other person in planning or committing the offense."

## C.R.S. 18-1-606 (2002) Criminal Liability of Corporations

(1) A corporation is guilty of an offense if:

(a) The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or

(b) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or knowingly tolerated by the board of directors or by a high managerial agent acting within the scope of his employment or in behalf of the corporation.

(2) As used in this section, "agent" means any director, officer, or employee of a corporation, or any other person who is authorized to act in behalf of the corporation, and "high managerial agent" means an officer of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

(3) Every offense committed by a corporation prior to July 1, 1985, which would be a felony if committed by an individual shall subject the corporation to the payment of a fine of not less than one thousand dollars nor more than fifteen thousand dollars. For such offenses committed on or after July 1, 1985, the corporation shall be subject to the payment of a fine within the presumptive ranges authorized by section 18-1.3-401 (1) (a) (III). Every offense committed by a corporation which would be a misdemeanor or petty offense if committed

by an individual shall subject the corporation to the payment of a fine within the minimum and maximum fines authorized by sections 18-1.3-501 and 18-1.3-503 for the particular offense of which the corporation is convicted.
History

Source: L. 71: R&RE, p. 406, § 1. C.R.S. 1963: § 40-1-706. L. 85: (3) amended, p. 658, § 7, effective July 1. L. 2002: (3) amended, p. 1511, § 180, effective October 1.
Link to 2003 Legislation Affecting this Section
Annotations

Cross references: For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 318, Session Laws of Colorado 2002.

Annotations
Am. Jur.2d. See 18B Am. Jur.2d, Corporations, § § 2134-2149; 21 Am. Jur.2d, Criminal Law, § § 210, 211.
Law reviews. For article, "Criminal Prosecution of Employers for Workplace Deaths and Injuries", see 16 Colo. Law. 1974 (1987).

**C.R.S. 18-1-709 (2002) Entrapment.**

The commission of acts which would otherwise constitute an offense is not criminal if the defendant engaged in the proscribed conduct because he was induced to do so by a law enforcement official or other person acting under his direction, seeking to obtain evidence for the purpose of prosecution, and the methods used to obtain that evidence were such as to create a substantial risk that the acts would be committed by a person who, but for such inducement, would not have conceived of or engaged in conduct of the sort induced. Merely affording a person an opportunity to commit

an offense is not entrapment even though representations or inducements calculated to overcome the offender's fear of detection are used.

History
Source: L. 71: R&RE, p. 411, § 1. C.R.S. 1963: § 40-1-809.
Annotations
Am. Jur.2d. See 21 Am. Jur.2d, Criminal Law, § § 244, 246-267, 477-479.
C.J.S. See 22 C.J.S., Criminal Law, § § 58-63.

Law reviews. For article, "Criminal Law", which discusses a recent Tenth Circuit decision dealing with the entrapment defense, see 61 Den. L.J. 272 (1984).

**C.R.S. 18-2-201 (2002) Conspiracy.**

(1) A person commits conspiracy to commit a crime if, with the intent to promote or facilitate its commission, he agrees with another person or persons that they, or one or more of them, will engage in conduct which constitutes a crime or an attempt to commit a crime, or he agrees to aid the other person or persons in the planning or commission of a crime or of an attempt to commit such crime.

(2) No person may be convicted of conspiracy to commit a crime, unless an overt act in pursuance of that conspiracy is proved to have been done by him or by a person with whom he conspired.

(3) If a person knows that one with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring to commit a crime with the other person or persons, whether or not he knows their identity.

(4) If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are part of a single criminal episode.

(4.5) Conspiracy to commit any crime for which a court is required to sentence a defendant for a crime of violence in accordance with section 18-1.3-406 is itself a crime of violence for the purposes of that section.

(5) If a person conspires to commit a felony which is defined by any statute other than one contained in this title and for which conspiracy no penalty is specifically provided, he is guilty of a class 6 felony. If a person conspires to commit a misdemeanor which is defined by any statute other than one contained in this title and for which conspiracy no penalty is specifically provided, he is guilty of a class 3 misdemeanor.

History
Source: L. 71: R&RE, p. 415, § 1. C.R.S. 1963: § 40-2-201. L. 74: (5) added, p. 250, § 1, effective February 13. L. 89, 1st Ex. Sess.: (5) amended, p. 21, § 12, effective July 1. L. 95: (4.5) added, p. 1250, § 5, effective July 1. L. 2002: (4.5) amended, p. 1512, § 183, effective October 1.

Annotations
Cross references: For the legislative declaration contained in the 2002 act amending subsection (4.5), see section 1 of chapter 318, Session Laws of Colorado 2002.

**C.R.S. 18-2-202 (2001). Joinder and venue in conspiracy prosecutions.**

(1) Subject to the provisions of subsection (2) of this section, two or more persons charged with criminal conspiracy may be prosecuted jointly if:

(a) They are charged with conspiring with one another, or

(b) They are charged with being involved in conspiracies that are so related as to constitute different aspects of a scheme of organized criminal conduct.

**C.R.S. 18-2-206 (2002). Penalties for criminal conspiracy – when convictions barred.**

(1) Conspiracy to commit a class 1 felony is a class 2 felony; conspiracy to commit a class 2 felony is a class 3 felony; conspiracy to commit a class 4 felony; conspiracy to commit a class 5 or 6 felony is a class 6 felony.

(2) A person may not be convicted of conspiracy to commit an offense if he is acquitted of the offense which is the object of the conspiracy where the sole evidence of conspiracy is the evidence establishing the commission of the offense which is the object of the conspiracy.

(3) If the particular conduct charged to constitute a criminal conspiracy is so inherently unlikely to result or culminate in the commission of a crime that neither that conduct nor the offender presents a public danger warranting the grading of the offense under this section, the court may enter judgment

and impose sentence for a crime of a lessor class or, in extreme cases, may dismiss the prosecution.

(4) Conspiracy to commit a class 1 misdemeanor is a class 2 misdemeanor.

(5) Conspiracy to commit a misdemeanor other than a class 1 misdemeanor is a class 3 misdemeaner.

(6) Conspiracy to commit a petty offense is a crime of the same class as the offense itself.

**C.R.S. 18-2-301. (2002) Criminal solicitation.**

(1) Except as to bona fide acts of persons authorized by law to investigate and detect the commission of offenses by others, a person is guilty of criminal solicitation if he or she commands, induces, entreats, or otherwise attempts to persuade another person, or offers his or her services to a third person, to commit a felony, whether as principal or accomplice, with intent to promote or facilitate the commission of that crime, and under circumstances strongly corroborative of that intent.

(2) It is a defense to a prosecution under this section that, if the criminal object were achieved, the defendant would be the sole victim of the offense or the offenses is so defined that his conduct would be inevitably incident to its commission or he otherwise would not be guilty under the statute defining the offense or under section 18-1-603 dealing with complicity.

(3) It is no defense to a prosecution under this section that the person solicited could not be guilty of the offense because of lack of responsibility or culpability, or other incapacity.

(4) It is an affirmative defense to a prosecution under this section that the defendant, after soliciting another person to commit a felony, persuaded him not to do so or otherwise prevented the commission of the felony, under circumstances manifesting a complete and voluntary renunciation of the defendant's criminal intent.

(5) Criminal solicitation is subject to the penalties provided for criminal attempt in section 18-2-101.

**C.R.S. 18-3-207 (2002) Criminal extortion - aggravated extortion.**

(1) A person commits criminal extortion if:

(a) The person, without legal authority and with the intent to induce another person against that other person's will to perform an act or to refrain from performing a lawful act, makes a substantial threat to confine or restrain, cause economic hardship or bodily injury to, or damage the property or reputation of, the threatened person or another person; and

(b) The person threatens to cause the results described in paragraph (a) of this subsection (1) by:
(I) Performing or causing an unlawful act to be performed; or
(II) Invoking action by a third party, including but not limited to, the state or any of its political subdivisions, whose interests are not substantially related to the interests pursued by the person making the threat.

(2) A person commits aggravated criminal extortion if, in addition to the acts described in subsection (1) of this section, the person threatens to cause the results described in

paragraph (a) of subsection (1) of this section by means of chemical, biological, or harmful radioactive agents, weapons, or poison.

(3) For the purposes of this section, "substantial threat" means a threat that is reasonably likely to induce a belief that the threat will be carried out and is one that threatens that significant confinement, restraint, injury, or damage will occur.

(4) Criminal extortion, as described in subsection (1) of this section, is a class 4 felony. Aggravated criminal extortion, as described in subsection (2) of this section, is a class 3 felony.
Source: L. 71: R&RE, p. 421, § 1. C.R.S. 1963: § 40-3-207. L. 75: Entire section amended, p. 618, § 8, effective July 21. L. 81: Entire section amended, p. 981, § 4, effective May 13; entire section amended, p. 974, § 8, effective July 1. L. 82: (2) amended, p. 623, § 17, effective April 2. L. 94: Entire section R&RE, p. 1619, § 1, effective May 31.
Am. Jur.2d. See 6 Am. Jur.2d, Assault and Battery, § 26.
Law reviews. For article, "Criminal Law", which discusses a recent Tenth Circuit decision dealing with extortion, see 62 Den. U. L. Rev. 153 (1985).
This section is applicable to efforts to collect a legally enforceable debt. People v. Rosenberg, 194 Colo. 423, 572 P.2d 1211 (1978).
This section and § 18-9-111, which classifies harassment as a misdemeanor, address separate and distinct crimes and the classification of such offenses have a rational basis in fact and are reasonably related to legitimate government interests. People v. Czemerynski, 786 P.2d 1100 (Colo. 1990).

**C.R.S. 18-3-404 (2002) Unlawful sexual contact.**

(1) Any actor who knowingly subjects a victim to any sexual contact commits unlawful sexual contact if:

(a) The actor knows that the victim does not consent; or

(b) The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or

(c) The victim is physically helpless and the actor knows that the victim is physically helpless and the victim has not consented; or

(d) The actor has substantially impaired the victim's power to appraise or control the victim's conduct by employing, without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission; or

(e) Repealed.

(f) The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority, unless incident to a lawful search, to coerce the victim to submit; or

(g) The actor engages in treatment or examination of a victim for other than bona fide medical purposes or in a manner substantially inconsistent with reasonable medical practices.

(1.5) Any person who knowingly, with or without sexual contact, induces or coerces a child by any of the means set forth in section 18-3-402 to expose intimate parts or to engage in any sexual contact, intrusion, or penetration with

another person, for the purpose of the actor's own sexual gratification, commits unlawful sexual contact. For the purposes of this subsection (1.5), the term "child" means any person under the age of eighteen years.

(1.7) Any person who knowingly observes or takes a photograph of another person's intimate parts without that person's consent, in a situation where the person observed has a reasonable expectation of privacy, for the purpose of the observer's own sexual gratification, commits unlawful sexual contact. For purposes of this subsection (1.7), "photograph" includes any photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material.

(2) Unlawful sexual contact is a class 1 misdemeanor, but it is a class 4 felony if the actor compels the victim to submit by use of such force, intimidation, or threat as specified in section 18-3-402 (4) (a), (4) (b), or (4) (c) or if the actor engages in the conduct described in paragraph (g) of subsection (1) of this section or subsection (1.5) of this section.

(3) If a defendant is convicted of the class 4 felony of unlawful sexual contact pursuant to subsection (1.5) or (2) of this section, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406; except that this subsection (3) shall not apply to paragraph (g) of subsection (1) of this section as it applies to subsection (2) of this section.

History
Source: L. 75: Entire part R&RE, p. 629, § 1, effective July 1. L. 77: IP(1) amended, p. 962, § 17, effective July 1. L. 86: (3) added, p. 777, § 6, effective July 1. L. 89: (1.5) added and

(2) and (3) amended, p. 830, § 41, effective July 1. L. 90: (1)(e) repealed, p. 1033, § 25, effective July 1. L. 91: (3) amended, p. 1912, § 21, effective June 1. L. 92: (1.5) amended and (1.7) added, p. 404, § 15, effective June 3. L. 94: (1.5) and (1.7) amended, p. 1717, § 9, effective July 1. L. 95: (3) amended, p. 1252, § 10, effective July 1. L. 96: (1.7) amended, p. 1581, § 4, effective July 1. L. 2000: IP(1), (1.5), (1.7), (2), and (3) amended, p. 700, § 20, effective July 1. L. 2002: (3) amended, p. 1513, § 190, effective October 1.

Annotations

Cross references: For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 318, Session Laws of Colorado 2002.

Annotations

Am. Jur.2d. See 65 Am. Jur.2d, Rape, § § 20-26.

C.J.S. See 75 C.J.S., Rape, § § 20-35.

Law reviews. For comment, "Expert Testimony on Rape Trauma Syndrome in Colorado: Broadening Admissibility to Address the Question of Consent in Sexual Assault Prosecutions", see 61 U. Colo. L. Rev. 833 (1990).

Where assault established by evidence, intent to commit rape no defense. Where all the elements of the crime charged (attempt to commit third degree sexual assault) were established by the evidence, the fact that the defendant's actions might also be construed as evincing an intent to commit rape did not constitute a defense to the charge. People v. DeLeon, 44 Colo. App. 146, 613 P.2d 639 (1980).

**C.R.S. 18-9-111 (g) (1999) "Harassment - stalking.**

(1) A person commits harassment if, with intent to harass, annoy, or alarm another person, he or she: (g) Makes repeated communication at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property"

**C.R.S. 24-5-101 (2002) Effect of criminal conviction on employment rights.**

Except as otherwise provided by section 4 of article XII of the state constitution, and except for the certification and revocation of certification of peace officers as provided in section 24-31-305, and except for the employment of personnel in positions involving direct contact with vulnerable persons as specified in section 27-1-110, C.R.S., the fact that a person has been convicted of a felony or other offense involving moral turpitude shall not, in and of itself, prevent the person from applying for and obtaining public employment or from applying for and receiving a license, certification, permit, or registration required by the laws of this state to follow any business, occupation, or profession. Whenever any state or local agency is required to make a finding that an applicant for a license, certification, permit, or registration is a person of good moral character as a condition to the issuance thereof, the fact that such applicant has, at some time prior thereto, been convicted of a felony or other offense involving moral turpitude, and pertinent circumstances connected with such conviction, shall be given consideration in determining whether, in fact, the applicant is

a person of good moral character at the time of the application. The intent of this section is to expand employment opportunities for persons who, notwithstanding that fact of conviction of an offense, have been rehabilitated and are ready to accept the responsibilities of a law-abiding and productive member of society.
Source: L. 73: p. 513, § 1. C.R.S. 1963: § 39-25-101. L. 90: Entire section amended, p. 1207, § 1, effective March 16. L. 92: Entire section amended, p. 1098, § 7, effective March 6. L. 95: Entire section amended, p. 1103, § 37, effective May 31. L. 99: Entire section amended, p. 923, § 2, effective July 1.

Link to 2003 Legislation Affecting this Section
Am. Jur.2d. See 63C Am. Jur.2d, Public Officers and Employees, § § 71-74.
C.J.S. See 67 C.J.S., Officers and Public Employees, § 22.
Strong public policy of Colorado is to aid ex-offenders in their rehabilitation to society and to insure that they are not discriminated against solely because they, at one time, were convicted of crimes. Watson v. Cronin, 384 F. Supp. 652 (D. Colo. 1974).

**35 P Pennsylvania Statutes (P.S.)**

**35 P.S. § 780-112. Records of distribution of controlled substances**

(a) Every person who sells or otherwise distributes controlled substances, shall keep records of all purchases or other receipt and sales or other distribution of such substances for two years from the date of purchase or sale. Such records shall include the name and address of the person from whom purchased or otherwise received or to whom sold or otherwise distributed, the date of purchase or

receipt or sale or distribution, and the quantity involved: Provided, however, That this subsection shall not apply to a practitioner who dispenses controlled substances to his patients, unless the practitioner is regularly engaged in charging his patients, whether separately or together with charges for other professional services, for substances so dispensed.

(b) Every practitioner licensed by law to administer, dispense or distribute controlled substances shall keep a record of all such substances administered, dispensed or distributed by him, showing the date, the name and address of the patient, and in the case of a veterinarian, the name and address of the owners of the animal to whom such substances are dispensed or distributed. Such record shall be kept two years from the date of administering, dispensing or distributing such substance and shall be open for inspection by the proper authorities.

(c) Persons registered or licensed to manufacture or distribute or dispense a controlled substance, other drug or device under this act shall keep records and maintain inventories in conformity with the record-keeping, order form and inventory requirements of Federal law and with any additional regulations the secretary issues. Controlled substances in Schedules I and II [1] shall be distributed by a registrant to another registrant only pursuant to an order form.

1972, April 14, P.L. 233, No. 64, § 12, eff. June 14, 1972.

[1] 35 P.S. § 780-104.

**35 P.S. § 780-113. Prohibited acts; penalties**

(a) The following acts and the causing thereof within the Commonwealth are hereby prohibited:

(1) The manufacture, sale or delivery, holding, offering for sale, or possession of any controlled substance, other drug, device or cosmetic that is adulterated or misbranded.

(2) – (13) Not applicable

(14) The administration, dispensing, delivery, gift or prescription of any controlled substance by any practioner or professional assistant under the practitioner's direction and supervision unless done (i) in good faith in the course of his professional practice; (ii) within the scope of the patient relationship; (iii) in accordance with treatment principles accepted by a responsible segment of the medical profession.

(15) – (20) Not applicable

(21) The refusal or failure to make, keep or furnish any record, notification, order form, statement, invoice or information required under this act.

(22) – (27) Not applicable

(28) The furnishing of false or fraudulent material information in, or omission of any material information from any application, report, or other document required to be kept or filed under this act, or any record required to be kept by this act.

**Revised Code of Washington (RCW).**

**RCW 9.02.110. Right to have and provide**

The state may not deny or interfere with a woman's right to choose to have an abortion prior to viability of the fetus, or to protect her life or health.

A physician may terminate and a health care provider may assist a physician in terminating a pregnancy as permitted by this section. Enacted by Laws 1992, ch. 1, § 2 (Initiative Measure No. 120, approved Nov. 5, 1991), eff. Dec. 5, 1991.

**RCW 9.02.120 Unauthorized abortions – Penalty**

Unless authorized by RCW 9.02.110, any person who performs an abortion on another person shall be guilty of a class C felony punishable under chapter 9A.20 RCW. Enacted by Laws 1992, ch. 1, § 4 (Initiative Measure No. 120, approved Nov. 5, 1991), eff. Dec. 5, 1991.

RCW 9.02.130. Defenses to prosecution
The good faith judgment of a physician as to viability of the fetus or as to the risk to life or health of a woman and the good faith judgment of a health care provider as to the duration of pregnancy shall be a defense in any proceeding in which a violation of this chapter is an issue.
Enacted by Laws 1992, ch. 1, § 4 (Initiative Measure No. 120, approved Nov. 5, 1991), eff. Dec. 5, 1991.

**RCW 9.02.150. Refusing to perform**

No person or private medical facility may be required by law or contract in any circumstances to participate in the performance of an abortion if such person or private medical facility objects to so doing. No person may be discriminated

against in employment or professional privileges because of the person's participation **or refusal** to participate in the termination of a pregnancy.
1992, ch. 1, § 4 (Initiative Measure No. 120, approved Nov. 5, 1991), eff. Dec. 5, 1991.

## RCW 9.02.170. Definitions

For further purposes of this chapter:

(1) "Viability" means the point in the pregnancy when, in the judgment of the physician on the particular facts of the case before such physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(2) "Abortion" means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.

(3) "Pregnancy" means the reproductive process beginning with the implantation of an embryo.

(4) "Physician" means a physician licensed to practice under chapter 18.57 or 18.71 RCW in the state of Washington.

(5) "Health care provider" means a physician or a person acting under the general direction of a physician.

**The United Nations Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. Article 2, Note 2.**

At http://www.hrweb.org/legal/cat.html, the following statement is clearly written: "Article 2, Note 2, No exceptional circumstances whatsoever, whether a state of war, internal political instability or any other public emergency, may be invoked as a justification of torture." Part1 defines torture as the following: "torture means any act by which pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information...or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of, or with the consent or acquiescence of a public official."

## Essential Material to Understand the Petition

### January 2, 1999 Phone Call Alleged Victim's Alleged Transcript

Mollie Schreibman
472-1247

At 2:00am on Jan. 2, 1999 the phone rang as I was asleep. I was expecting a call from work that morning so when I answered I could not tell who was on the phone at first. The call went as follows, however, I do not remember some of it since I was asleep:

Mollie: Hello
Raymond: Hello, Mollie, how are you?
Mollie: I did not answer and told him I couldn't talk to him
Raymond: Happy New Year
Mollie: Can I ask you why you are calling me?
Raymond: I hear that women talk through third parties.

He then proceeded to tell me a story about his boss' wife and his friend KC about women and third parties. Much of this part of the conversation I do not remember. He then asked how I was again and I said fine and told him I had to go and hung up the phone.

I checked the caller ID when I hung up and realized he had been calling from a cell phone. My boyfriend, Chris, called the cell phone later that morning to verify that it was his phone, which it is. The number to the phone is 970-690-1947 (pictures provided verifying the number).

"s/Mollie K. Schreibman

Supreme Court, U.S.
FILED
MAY 14 2004
OFFICE OF THE CLERK

(2)

No. 03-1278

IN THE
Supreme Court of the United States

RAYMOND CHARLES PERSIK,
*Petitioner*

v.

COLORADO STATE UNIVERSITY,
*Respondent*

On Petition For Writ of Certiorari
To The U.S. Court of Appeals for the 10th Circuit

# PETITION FOR REHEARING

RAYMOND CHARLES PERSIK
Pro Se
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Arvada, CO 80003-1509
(303) 425-3520

## QUESTIONS FOR THE US SUPREME COURT ON REHEARING

1. "Agency policy can be developed either by the adoption of general rules or through case-by-case adjudication, *The Judicial Role in Defining Procedural Requirements for Agency Rulemaking*, 87 Harvard Law Review 782 (1974); as an additional protection, against either a claim based either on retaliation, or potential collateral objectives of third parties involved in a mixed motive discriminatory action, can this Court toll the 300-day statutory limitation, imposed to file a valid charge with the EEOC, if a questionnaire has already been submitted prior to the "plaintiff's" absence from the jurisdiction of the federal circuit in which the action of the EEOC is pending, in the event any questionable event, criminal or civil, prevents the "plaintiff" from attending a meeting with the EEOC to file a timely charge of discrimination?

2. Again, using *Judicial role*, *supra*, can this Court adopt a uniform standard for the Federal Equal Employment Opportunity Commission (EEOC) to operate under in the United States of America, by adopting the filing of the Intake Questionnaire, if a subsequent charge is filed, as fulfilling the 300 day filing deadline, as at least two U.S. circuit courts have done?

3. Can this Court now consider the EEOC's alleged violations of their own policy in dismissing the charge on February 16, 2001, coupled with new information clearly demonstrating the EEOC filed the charge on the 300$^{th}$ day following the last date of alleged discrimination in the questionnaire, and the 294$^{th}$ day following the last day, upon amendment, and can this Court remand this action so that the Denver EEOC can supply reasons for their alleged failure to turn the case over to the U.S. Attorney General, *SEC v.*

*Chenery Corp.*, 318 US 80 (1943) (agency violation of their own policy); in addition, does this further the petitioner's desire to invoke equitable estoppel?

4. Does the argument, pertaining to question 3 above, further the petitioner's claim for equitable estoppel pertaining to his admitted failure to serve both CSU, and the Colorado attorney general, based on his allegation that the CSU legal clerk, and possibly CSU's attorney Lawrence Pendleton, stated that CSU was not the correct body to receive service of process, by clearly "demonstrating that both this offense and the 'other crimes' show the 'modus operandi,' 'handiwork,' or 'signature' of the defendant", 29 Am Jur 2d § 423 Evidence, To show identity or modus operandi?

5. Once again, the Petitioner asks this Court to review the constitutionality of *Roe v. Wade*, 410 US 113 (1973); since church and state are separate in the USA, is alleged religious discrimination, based on the petitioner's religious based pro life view, the one area where we consider God's love in making a decision to add a sixth class of protected "persons" to the five existing classes currently covered by Title VII?

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## ARGUMENT

### Part I. Tolling of 300-day statutory limitation due to an unforeseen extension of absence by a "plaintiff" with a pre-arranged meeting to file a charge, against a known respondent, with the district office of the EEOC maintaining jurisdiction over the claim

1. "Agency policy can be developed either by the adoption of general rules or through case-by-case adjudication, *The Judicial Role in Defining Procedural Requirements for Agency Rulemaking*, 87 Harvard Law Review 782 (1974); as an additional protection, against either a claim based either on retaliation, or potential collateral objectives of third parties involved in a mixed motive discriminatory action, can this Court toll the 300-day statutory limitation, imposed to file a valid charge with the EEOC, if a questionnaire has already been submitted prior to the "plaintiff's" absence from the jurisdiction of the federal circuit in which the action of the EEOC is pending, in the event any questionable event, criminal or civil, prevents the "plaintiff" from attending a meeting with the EEOC to file a timely charge of discrimination?

2. In "*Tolling of Statute of Limitations during absence from State as affected by fact that Party claiming benefit of Limitations remained Subject to Service during Absence or Nonresidence*", by Kenneth J. Rampino, J.D., 55 ALR 3d 1158, 1161 (1974), Rampino states: " A typical tolling provision or, as some courts refer to it, saving clause, with which the cases herein are concerned, states that if at the time the cause of action arises a party is outside the jurisdiction, or if after the cause of action occurs he departs from the state, the time of his absence shall not be computed

for purposes of the statute of limitations". More specifically, this annotation discusses a party "remaining amenable to service of process" during an absence. The petitioner wants to open the door to provide these same benefits to an aggrieved person filing a charge of discrimination with the EEOC.

3. The petitioner states that the 300-day clock begins running on April 18, 2000 when Dr. Denke, of Colorado State University (CSU), signed a letter denying him acceptance back into the Ph.D. program in Chemistry, after a university committee received compelling, new discriminatory information about the events alleged to have occurred at CSU. The petitioner was absent two times from Colorado between April 18, 2000 and the filing of the EEOC charge on February 6, 2001, *petition for writ* at A- 35.

a. The petitioner, [Persik], returned to WA State, via Greyhound, to obtain documented facts of the alleged disparate impact case of discrimination against CSU, on the eve of Labor Day 2000. The petitioner attempted to remain home in Washington State; however, the alleged employment discrimination continued at a scientific temporary labor company in Bellevue, WA. The petitioner went to the Seattle, WA office of the EEOC circa early November 2000 where an EEOC official briefly met with him; she stated words very close to: "the problems you are experiencing originated prior to your problems with [Mollie]". The petitioner took this to imply his alleged equal employment, and alleged equal protection problems were rooted in divorcing his former wife over a controversial abortion taking place on September 27, 1994 at the University of Washington (UW) Medical Center in Seattle, WA. The petitioner was able to earn the money to return to Colorado to complete the Intake Questionnaire prior to Thanksgiving 2000; however, this was already 3 weeks after his planned return.

b. The petitioner filed his EEOC Questionnaire on December 4, 2000 in this case. Ms. Hamming previously set up a meeting, to investigate allegations against Manpower Inc[1], for January 9, 2001, and the petitioner was told, by Ms. Hamming[2], that both questionnaires would be discussed in the scheduled meeting. The petitioner left for Pennsylvania circa December 19, 2000 where he was hospitalized after allegedly being hit by an automobile on December 22, 2000 near Mt. Holly Springs, PA. The meeting was postponed due to his involuntary hospitalization from December 22, 2000 until approximately January 5, 2001. Thus, this resulted in a 15 day unplanned extension of absence, from the State of Colorado, because the petitioner was not able to earn money to return to Colorado for the planned meeting on January 9, 2001 with the EEOC in Denver.

4. In *Absence as Tolling Statute of Limitations, supra*, at 1162, Rampino discusses "Fraud as tolling period for bringing action prescribed in statute creating the right of action. 15 ALR 2d 500. Regardless of the facts surrounding the accident, on December 22, 2000, whether it was a set-up, or an accident, it constitutes alleged fraud because officer Lee, PA state patrol, classified the case as a hit and run. Therefore, equal employment opportunity case law could be furthered if this Court is willing to grant this petition.

5. The court applied the "saving clause" in *Rich v Jefferson Medical College*, 125 F Supp 357 (1954, DC Pa), where the "court went on to say that the interpretation of the tolling provision could not be affected by the fact that the party was a domiciliary when he left the state , and thus could have been served at his usual place of abode, the court holding that the Pennsylvania saving clause operated to toll the

---

[1] Petition for Writ filed on April 12, 2004 in case 03-1473.

[2] The petitioner believes it was Ms. Hamming.

statute while the defendant was serving in the military..., the court concluding that it had not been shown that the defendant was subject to ordinary Pennsylvania legal process". Persik located additional evidence, since filing the petition for writ, confirming the alleged conspiracy at 32. The alleged harassment and discrimination, at CSU, started in August 1997; the State Board of Agriculture deposited the petitioner's net pay into US Bank account number 1911992297 on August 15, 1997 with check number 255588. Officer Lee's report states that he picked up Persik at 5:55, and PA is the 2nd state. The US Army sent the petitioner to Ft McClellan, Alabama in 1988 (88) for chemical officer basic course.

**Part II. Developing a standardized Federal Equal Employment Opportunity System where all US Circuits treat all people as equals in the USA**

1. Persik requests this Court to still adopt the filing of the Intake Questionnaire as meeting the 300-day requirement as outlined in the original petition at 36-40. This is necessary in Persik v. Manpower Inc., 03-1473; however, it is no longer necessary in this case.

2. While drafting this petition, Persik checked the time from last date of alleged discrimination to the filing of the charge of discrimination, petition for writ at A-35-37. At A-31 in the petition for writ, Persik amended his charge to correct the last day of alleged discrimination to be April 18, 2000; therefore, the EEOC filed the charge on the 295th day following the last day of alleged discrimination. However, this was actually the 294th day following April 18, 2000. Furthermore, the EEOC filed the charge against CSU timely on the 300th day following the date listed in the December 4, 2000 Intake Questionnaire. In *Edelman v. Lynchburg College*, 228 F. 3d 503 (4th Cir. 2000), the court states: EEOC regulation, providing that EEOC charge may be

amended to cure technical defects or omissions, …, and that such amendments relate back to the date charge was first received". An amendment was filed on March 2, 2001 in the EEOC in Denver to a timely filed charge.

**Part III. Is the EEOC's failure to turn the case over to the US Attorney's office a case of equitable estopple since the charge was filed 300 days following April 12, 2000 and 294 days following the amended date of last discrimination, April 18, 2000.**

1. In *Persik v. Colorado State University et al.*, 60 Fed. Appx. 209, 209 (10th Cir. 2003), the court states: "Graduate teaching assistant waived appellate review of magistrate judge's report recommending dismissal of claims against university on ground that it was not proper party by failing to file a specific objection to report. Fed.Rules Civ. Proc. Rule 72(b), 28 U.S.C.A.". Persik disagrees.

2. At D087, Index for Appx to Dfdt – Appellee Adecco's Response Brief, the petitioner clearly states in his "Objections to the Recommendations…": The Plaintiff prays that this Court will except[3] the following objections: "the Attorney General should have been representing the Plaintiff". Persik, being pro se, considers this to be a clear objection to CSU not being the proper party to this suit.

3. The petitioner continues by citing, at ¶ 2 (g) of the "Objections…", (D 090, Appx to Dfdt –App Addeco, *supra*,): 31 ALR Fed 657, 663 § 1[c], § 2000 e-3, states: (f) Civil actions by Commission, Attorney General, … In the case in which a respondent is a government, government agency, … if the Commission has been unable to secure a conciliation agreement, … the Commission shall take no

[3] *Accept* is the correct spelling in the context of the sentence.

further action and shall refer the case to the Attorney General who may bring civil action against such respondent in the appropriate United States district court".

4. Again, Persik asks this court to review: *Violations by Agencies of Their Own Regulations*, 87 Harvard L. R. 629, 629 (1974) stating: "although the public is not free to violate federal administrative regulations, agencies in some circumstances have been permitted to depart from their own regulations, *American Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 539 (1970) (permitting violation). However, at 630, *Violations, supra*, the review states: "Agency violations of regulations which have been promulgated to benefit party, by entitling him to a substantive benefit or exemption ... have generally been invalidated by the courts. At 650, "Therefore, a court confronted with an unexplained violation should undertake the expense and delay of remanding the action so that the agency can supply reasons. *SEC v. Chenery Corp.*, 318 US 80 (1943) "provides precedent". At 651, *Violations*, "if the agency does not respond in a satisfactory manner, then the action should be reversed".

5. Persik maintains that this further research compliments his claim for equitable estoppel. "Whether party intentionally committed an act is irrelevant under doctrine of equitable estoppel", *Bechtel v. Robinson*, 886 F. 2d 644 (1990). The question can be posed, to the Denver office of the EEOC, on remand, "did someone consult with counsel for CSU, or the CO attorney general, between the February 6, 2001 filing of the EEOC charge and the EEOC's February 16, 2001 dismissal for untimely filing, petition for writ, A-33.

Furthermore, Persik states for clarity he is not alleging fraudulent intent on the part of CSU at this stage of the process, the dismissal of a timely filed charge, rather he cites: "Fraudulent intent is not necessary to estoppel; rather, estoppel is appropriate against a person who adopts position

which reasonably misleads someone into detrimental reliance regardless of intent of his actions, if to hold otherwise would have unjust effect. *In re Midway Airlines, Inc.* 180 B.R. 851.

6. Persik understands that "Law does not favor use of equitable estoppel against government", *Abel v. United States*, 995 F. Supp. 1036 (D. Neb. 1998); however, here Persik is pushing an issue that expands the very rights, through case law, of the people that the EEOC is to protect, and furthermore, the function of an educational institution, such as CSU, is to educate. Therefore, equitable estoppel "may be invoked against a government where: government makes misrepresentations; upon which defendant relies; to its detriment; and where misrepresentation constitutes affirmative misconduct", *Public Interest Research group of New Jersey v. Yates Industries, Inc. (AET)*, 757 F Supp 438 (1991), reconsideration granted in part 790 F Supp 511 (1991).

**Part IV. "Demonstration that both this offense and the 'other crimes' show the 'modus operandi,' 'handiwork,' or 'signature' of the defendant", 29 Am Jur 2d § 423, as a means of furthering the petitioner's argument for equitable estoppel by accepting alleged statements by CSU legal clerk personnel and possibly Mr. Pendleton, CSU counsel.**

1. Does the argument, pertaining to question 3 above, further the petitioner's claim for equitable estoppel pertaining to his admitted failure to serve both CSU, and the Colorado attorney general, based on his allegation that the CSU legal clerk, and possibly CSU's attorney Lawrence Pendleton, stated that CSU was not the correct body to receive service of process, by clearly "demonstrating that

both this offense and the 'other crimes' show the 'modus operandi,' 'handiwork,' or 'signature' of the defendant", 29 Am Jur 2d § 423 Evidence, To show identity or modus operandi?

2. The petitioner alleges that Ms Kristen Morrow [Morrow], of Nebraska, allegedly requested either Ms. Schreibman, Ms. Cutler or CSUPD's Officer John Higney, to allegedly falsify statements beginning in August 1997, for potential pecuniary benefit if Persik could be forced into the sales industry in Pennsylvania. Morrow's mother is an attorney, and Morrow previously discussed, with Persik, becoming an attorney. Thus, Morrow may know the legal ramifications of alleged misstatements, by a CSU legal secretary, not authorized to give advice. Persik would not know the implications in accepting advice. Thus, Morrow's "signature", is allegedly all over the act described in ¶1 above because it "bears a high degree of similarity to the charged offence", *United States v. Foutz*, 540 F 2d 733 (CA4 Md) occurring since the onset of the alleged harassment and discrimination in August 1997 at CSU. The pattern is simple; Persik maintains that he is allegedly continuously victimized in a mixed motive, disparate impact case of discrimination based on his gender and religious, pro life views (anti-abortion).

3. Persik views this issue as a very simple case of equitable estoppel.

## Part V. Introduction of a 6th Protected Class under Title VII by new Case law

1. Persik requests this Court establish a 6th class of protected persons, *the Unborn child class*, always a minority in the USA, using the arguments presented in the petition for writ and this petition for case adjudication. Please remember the song from our childhood: "Jesus loves all the little children

of the World": the concept is simple, protect all of our people from conception until they pass from this Earth, and together WE must: (1) ensure they have a safest possible environment to grow up in, (2) receive the best possible education in the world, and (3) a workplace observing total equality for the individual.

2. "Ordinarily, the Supreme Court will not grant certiorari merely to review evidence or inferences drawn there from. However, special and important reasons for the grant of certiorari are present where the lower federal and state courts persistently deprive litigants of their right to a jury determination". *Rogers v. Missouri Pacific Railroad Co.*, 352 US 500 (1957). Persik will give this Court very special and important reasons, human life, human dignity and a complete package of equal employment opportunity in the US. Persik's Aunt and Uncle were from Peoria, IL. They had connections with Caterpillar in England. Persik's 1986, US Passport, clearly showed a P and a Visa stamp for Lima, Peru; he alleges his son's life was taken in 1994 for the former President Clinton's agenda (EEO for "gay" personnel).

3. "The 1994 confrontation between Pope John Paul II and the administration of U.S. President Bill Clinton over world population and family planning issues was inevitable, and could have been foreseen as early as the summer of 1992. Governor Clinton … ran on the most radical 'social issues' platform … committing themselves to federal funding of abortion on demand…", Witness to Hope, The Biography of Pope John Paul II, pg 715, George Weigel, Harper Collins Publishers, New York, NY 2001.

4. Persik maintains former WA Governor Lowry, supported the Clinton administration's 1992 goals on both abortion and gay rights. In 1992, Persik's WA AR NG unit traveled to Albany County, Wyoming. The Clinton's now reside in NY.

In the book, Whose Life? A Balanced Comprehnsive View of Abortion from its Historical Context to the Current Debate, by Catherine Witney, pg 128, Witney states: "Now, almost twent years later, Michelman radiated empathy for women like herself as she stared into the hot lights of the camera. And there was a hard edge to her voice as she echoed the imagery of the most famous abortion rights foe George Bush: 'To politicians who oppose choice, we say 'Read our lips. Take our rights. Lose your jobs'""

5. We need this class of protected "Persons". Persik continues to be allegedly discriminated against by other employers to this day. Persik now has a wonderful Christian woman, from Switzerland, in his heart. She will remain there for his life should she choose to.

## CONCLUSION

The Petitioner prays this Court will Grant this petition for the reasons outlined, the petition for writ, and the statements in *Persik v. Colorado*, 02-875 (2002). Furthermore, the petitioner prays that this Court will exercise it's authority and revisit *Persik, supra*, as stated in 2A Fed. Proc § 3:410, " If Certiorari is denied earlier in a litigation and a subsequesnt petition for certiorari is later granted, ..., may consider questions raised by both petitions", *Chessman v. Teets*, 354 US 156 (1957), *Mercer v. Theriot*, 377 US 152 (1964)..

Respectfully submitted this 14th day of May 2004.

Raymond Charles Persik

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CERTIFICATE PURSUANT TO SUPREME COURT
RULE 44.2

**CERTIFICATE**

I certify pursuant to Supreme Court Rule 44.2 that this petition for rehearing is restricted to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented, and that it is presented in good faith and not for delay.

Raymond Charles Boral

This document has been subscribed and affirmed, or sworn to before me in the county of Jefferson, state of Colorado this 14th day of May 2004.

DIANNA B. LYTLE
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires Apr. 14, 200

Dianna B Lytle

DIANNA B. LYTLE
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires Apr. 14, 2007